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FINAL
CITY COUNCIL
CITY OF WICHITA
KANSAS

City Council Meeting
09:00 a.m. January 4, 2011

City Council Chambers
455 North Main

OPENING OF REGULAR MEETING

- Call to Order
- Invocation
- Pledge of Allegiance
- Approve the minutes of the regular meeting on December 28, 2010

OATH OF OFFICE

- Swearing in of Interim District III Council Member
(Oath of Office administered by Judge Jennifer Jones)

AWARDS AND PROCLAMATIONS

None

I. PUBLIC AGENDA

NOTICE: No action will be taken relative to items on this agenda other than referral for information. Requests to appear will be placed on a "first-come, first-served" basis. This portion of the meeting is limited to thirty minutes and shall be subject to a limitation of five minutes for each presentation with no extension of time permitted. No speaker shall be allowed to appear more frequently than once every fourth meeting. Members of the public desiring to present matters to the Council on the public agenda must submit a request in writing to the office of the city manager prior to twelve noon on the Tuesday preceding the council meeting. Matter pertaining to personnel, litigation and violations of laws and ordinances are excluded from the agenda. Rules of decorum as provided in this code will be observed.

1. Christopher May - Requesting revisions to City Ordinance regarding Street Vendors.

COUNCIL BUSINESS

II. UNFINISHED COUNCIL BUSINESS

None

III. NEW COUNCIL BUSINESS

1. International Association of Firefighters Fact-Finding.

RECOMMENDED ACTION: At the conclusion of the hearing the City Council finds that it is in the public interest, including the interest of public employees that the contract's terms be the same as the immediately proceeding contract.

2. Analysis of Impediments to Fair Housing Choice.

RECOMMENDED ACTION: Approve the Analysis of Impediments and authorize submission to the U.S. Department of Housing and Urban Development (HUD).

3. Pawnee and Broadway Intersection Improvement. (District III)

RECOMMENDED ACTION: Approve the project, place the amending ordinance on first reading and authorize the necessary signatures.

4. Harry and Broadway Intersection Improvement. (Districts I and III)

RECOMMENDED ACTION: Approve the project, place the amending ordinance on first reading and authorize the necessary signatures.

(9:30 a.m. or soon thereafter)

5. Public Hearing: Repair or Removal of Dangerous and Unsafe Structures. (Districts I, III, and IV)

Property Address

Council District

a. 1715 North Chautauqua

I

b. 2564 South Holyoke (four-plex)

III

c. 1313 West 55th Street South (commercial building)

IV

RECOMMENDED ACTION: Close the public hearing, adopt the resolutions declaring the building a dangerous and unsafe structure, and accept the BCSA recommended action to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structure. Any extensions of time granted to repair the structure would be contingent on the following: (1) All taxes have been paid to date, as of January 4, 2011; (2) the structure has been secured as of January 4, 2011 and will continue to be kept secured; and (3) the premises are mowed and free of debris as of January 4, 2011, as will be so maintained during renovation.

COUNCIL BUSINESS SUBMITTED BY CITY AUTHORITIES

PLANNING AGENDA

NOTICE: Public hearing on planning items is conducted by the MAPC under provisions of State law. Adopted policy is that additional hearing on zoning applications will not be conducted by the City Council unless a statement alleging (1) unfair hearing before the MAPC, or (2) alleging new facts or evidence has been filed with the City Clerk by 5p.m. on the Wednesday preceding this meeting. The Council will determine from the written statement whether to return the matter to the MAPC for rehearing.

IV. NON-CONSENT PLANNING AGENDA

1. ZON2010-00041 – Zone change from SF-5 Single-Family Residential (“SF-5”) to TF-3 Two-Family Residential (“TF-3”), generally located on the northeast corner of University Avenue and All Hallows Avenue. (District IV)

RECOMMENDED ACTION: 1) Adopt the findings of the MAPC, approve the zone change, place the ordinance on first reading and authorize the Mayor to sign the ordinance (requires a three-fourths majority vote); OR 2) Override the recommendation of the MAPC and deny the zone change (requires a two-thirds majority vote); OR 3) Return the application to the MAPC for reconsideration.

V. CONSENT PLANNING AGENDA (ITEMS 1 THROUGH 3)

1. *No Protest Agreement for Future Paving Requirements for SUB2010-00061- Lot Split of the Westwood Addition located south of Maple and west of Hoover. (District V)

RECOMMENDED ACTION: Approve the Agreement.

2. *ZON2010-00042 – City zone change from TF-3 Two-family Residential (“TF-3”) to GC General Commercial (“GC”); generally located east of Grove Avenue, on the southwest corner of Green and 13th Streets North. (District I)

RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the zone change subject to the provisions of Protective Overlay #248, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required). (An override of the Planning Commission’s recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

3. *ZON2010-00043-City Zone Change from SF-Single-Family Residential to LC Limited Commercial, with a PO Protective Overlay, generally located east of Ridge Road, south of Maple Street. (District V)

RECOMMENDED ACTION: Adopt the findings of the MAPC, approve the zone change subject to the provisions of Protective Overlay #249, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required).

HOUSING AGENDA

NOTICE: The City Council is meeting as the governing body of the Housing Authority for consideration and action on the items on this Agenda, pursuant to State law, HUD, and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

Fern Griffith, Housing Member is also seated with the City Council.

VI. NON-CONSENT HOUSING AGENDA

None

VII. CONSENT HOUSING AGENDA

None

AIRPORT AGENDA

NOTICE: The City Council is meeting as the governing body of the Airport Authority for consideration and action on items on this Agenda, pursuant to State law and City ordinance. The meeting of the Authority is deemed called to order at the start of this Agenda and adjourned at the conclusion.

VIII. NON-CONSENT AIRPORT AGENDA

None

IX. CONSENT AIRPORT AGENDA (ITEMS 1 AND 2)

1. *Taxiway A1 Extension and Apron - Change Order No. 2 - Colonel James Jabara Airport.

RECOMMENDED ACTION: Approve the change order and authorize the necessary signatures.

2. *Mid-Continent Drive and Bridge Rehabilitation - Change Order No. 2 - Mid-Continent Airport.

RECOMMENDED ACTION: Approve the change order and authorize the necessary signatures.

COUNCIL AGENDA

X. COUNCIL MEMBER AGENDA

None

XI. COUNCIL MEMBER APPOINTMENTS

1. Board Appointments.

RECOMMENDED ACTION: Approve the Appointments.

XII. CONSENT AGENDA (ITEMS 1 THROUGH 14)

1. Report of Board of Bids and Contracts dated January 3, 2011.

RECOMMENDED ACTION: Receive and file report; approve Contracts;
authorize necessary signatures.

2. Applications for Licenses to Retail Cereal Malt Beverages:

Renewal
Michelle Anthony

2011
Sunshine Energy SE160

(Consumption off Premises)
1535 East Pawnee

RECOMMENDED ACTION: Approve licenses subject to Staff review and approval.

3. Preliminary Estimates: (None)

RECOMMENDED ACTION: Receive and file.

4. Statement of Costs:

a. Statements of Costs.

RECOMMENDED ACTION: Approve and file.

5. Agreements/Contracts:

- a. Working Agreement and Memoranda of Understanding for Cheney Reservoir Watershed Water Quality Projects.

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

6. Design Services Agreements:

- a. Supplemental Design Agreement for a Multi-Use Path along I-135 to K-96, McAdams Park to Grove Park. (Districts I and VI)
- b. Supplemental Agreement for Design Services for improvements to the Big Slough South, south of 47th Street South, west of I-135 Freeway. (District III)

RECOMMENDED ACTION: Approve Agreements/Contracts; authorize the necessary signatures.

7. Change Orders:

- a. Change Order No. 1: Nomar International Market. (District VI)
- b. Change Order No. 3: Paving and Drainage Improvement in Cedar View Village Addition, east of Greenwich, south of Kellogg. (District II)

RECOMMENDED ACTION: Approve the Change Orders and authorize the necessary signatures.

8. Minutes of Advisory Boards/Commissions

Board of Park Commissioners, December 7, 2010

Board of Park Commissioners, December 20, 2010

Police and Fire Retirement System, November 17, 2010

Wichita Employees Retirement System, November 17, 2010

Wichita Transit Advisory Board, December 10, 2010

Wichita Board of Appeals of Refrigeration, Air-Conditioning, Warm Air Heating and Boiler, October 28th, 2010

RECOMMENDED ACTION: Receive and file.

9. Exchange of Property along Union Pacific Rail Corridor for the Heartland Preparedness Center Project.
(District I)

RECOMMENDED ACTION: Approve the Budget and the Easement Exchange Agreement and authorize the necessary signatures.

10. Proposed 2011 Contracted Street Maintenance Program.

RECOMMENDED ACTION: Approve the 2011 Contract Street Maintenance Program.

11. Support of Sedgwick County's application for Juvenile Accountability Block Grant (JABG) funding.

RECOMMENDED ACTION: Approve the waiver of funding and authorize the appropriate signatures on the letter of support.

12. 2011 Narcotic Seizure Fund Budget.

RECOMMENDED ACTION: Adopt the Narcotic Seizure Fund budget.

13. Contract Renewal with Sedgwick County for Housing First Funding.

RECOMMENDED ACTION: Approve the contract agreement renewal and authorize the necessary signatures.

14. 2011 Senior Wednesday Program-WATER Center. (District III)

RECOMMENDED ACTION: Approve receipt of the grant award.

15. Second Reading Ordinances: (None)

RECOMMENDED ACTION: Adopt the Ordinances.

Adjournment

**CITY OF WICHITA
City Council Meeting
January 4, 2011**

TO: Mayor and City Council Members

SUBJECT: International Association of Firefighters Fact-Finding

INITIATED BY: Law Department

AGENDA: New Business

Recommendation: Determine terms of the Memorandum of Agreement between the City of Wichita and the International Association of Firefighters, Local 135.

Background: The City of Wichita and the International Association of Firefighters have not negotiated a contract to succeed the contract which expired on December 25, 2009. After an impasse in negotiations was declared and mediation was unsuccessful, a fact-finder was appointed; the fact-finder issued a report on December 3, 2010.

Analysis: By law, the City Council, or a duly authorized committee of the council, is to conduct a hearing in which the parties are to explain their positions. Following the hearing, the City Council must determine the terms of a one-year contract, effective December 26, 2009 through December 24, 2010. The standard which the City Council must use to make its decision is what it deems to be in the public interest, including the interest of the public employees involved.

Financial Considerations: The financial implications will be presented at the hearing.

Goal Considerations: Provide a Safe and Secure Community.

Legal Considerations: The hearing and decision criteria are mandated by K.S.A. 75-4332.

Recommendations/Actions: It is recommended that, at the conclusion of the hearing the City Council find that it is in the public interest, including the interest of public employees that the contract's terms be the same as the immediately proceeding contract.

Attachments: Report of Fact-finder.

IN THE MATTER OF FACT FINDING
BETWEEN
THE CITY OF WICHITA, KANSAS
AND
THE INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS
LOCAL #135

APPEARANCES FOR THE CITY

Karl Gallagher, Attorney
City of Wichita, Kansas
c/o McAnany, Van Cleve & Phillips
707 Minnesota Avenue-4th Floor
Kansas City, Kansas 66117

Mark Manning, City Budget Officer

APPEARANCES FOR IAFF LOCAL 135

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Wichita, Kansas 67202

Rocky Bumgarner
President
IAFF Local 135

FACT FINDER: Ronald G. Iacovetta

BACKGROUND AND ISSUE(S) BEFORE THE FACT FINDER.

This case went initially to Mediation without resolve and involves an impasse between the City of Wichita, Kansas and IAFF Local 135 regarding wages and the maintenance of a fixed number of bargaining unit numbers each day. Specifically, the Union wants a 1% cost of living adjustment ("COLA" or "GPA" increase across the board and a provision requiring the City to maintain 118 bargaining unit members each day. The City has noted that it had only heard of the request for a 1% across the board increase at the Fact-Finding hearing and the information in Union Exhibit 9 was new to the City. The City also notes that the Union's charges regarding Deputy Chief Aaron and Division Chiefs Wenzel and Crisp were brought forth for the first time at the hearing. The City acknowledges that the issue of minimum manning was discussed during contract negotiations and was prepared to respond to this issue at the hearing.

The International Association of Fire Fighters (IAFF) Local 135 represents the fire fighters in the Fire Department in the City of Wichita for the ranks of firefighters, fire lieutenants, fire captains as well as the fire lieutenants and fire captains at Wichita Mid Continent Airport. There are 438 employees in the Wichita Fire Department and approximately 350 are members of the IAFF Local 135. The City of Wichita has a population of 350,000 and the City has a work force totaling approximately 3,267.

The Union had rejected two tentative agreements with the City in negotiation sessions prior to fact-finding and the City contends that the Union did not identify what parts of the tentative agreements led to Union rejection. The City has noted that after the first rejection additional concessions were made by the City in hopes of avoiding fact-finding but the offer was rejected by union membership.

THE UNION ARGUMENT AND POSITION

The Union issues(s) as framed at the Hearing and in Post-Hearing Brief is as follows::

1. Should the City be allowed to continue to underpay IAFF members' compensation under the 2010 Memorandum of Agreement and deny a 1% cost of living increase for all Union Members
2. Does the City have the ability to pay for the increased compensation benefits requested by the IAFF?

3. Should the City be allowed to place members of the Community at risk by refusing to include non-restrictive minimum staffing language which was previously endorsed by City management as part of the 2010 Memorandum of Agreement?
4. Should the City be allowed to disregard all previously agreed to items in negotiations in 2010, with no good reason (s) for not approving previously agreed measures.

A: THE UNION CONTENDS THAT IAFF MEMBERS ARE COMPENSATED AT A RATE LESS THAN THOSE IN COMPARISON COMMUNITIES

Counsel notes that data as recent as 2009 indicates that comparison communities were paying union firefighters more with Wichita firefighters pay on average was 12.8% less to their rank and file than the industry standard for firefighters on the job for 6 years and the wage lag continues to be behind the norm for 16, 20 and even beyond twenty years of service. (Union Exhibit 9 at pg.61-62). Counsel holds that while the City has argued that such wage comparisons represent only a "snap shots" of actual periods of time they did not provide contrary evidence or studies to discredit the Union's wage comparisons. The Union contends the evidence is compelling and accurately depicts the rate of compensation in comparison communities and clearly indicates that Wichita firefighters are lagging behind in compensation indicating that after the first year in service wages are less than in the comparison communities. Counsel has argued that while not all areas of compensation could be covered it is evident that the summary data provided demonstrates that Wichita is behind the curve in compensating union members of the Fire Department.

Based on these comparisons the IAFF position is that Union members should be granted a 1% across the board cost of living increase as awarded in 2010 to other exempt employees in the City of Wichita. Counsel notes that the Union is not asking for funding to close the gap in wages evident in the comparison communities. As Union President testified, Union membership recognizes that economic times are rough and does not expect or demand that the City make up the wage deficiency during the contract period. Rather, the Union wants only to slow the erosion and prevent wages from falling further behind for Union members in the Wichita Fire Department. Counsel notes that the 1% cost of living increase will serve this purpose and afford Union members the same benefit given to exempt Wichita employees during the same Agreement time frame.

B. THE UNION CONTENDS THE CITY HAS THE ABILITY TO PAY THE 1% INCREASE TO RANK AND FILE MEMBERS OF THE IAFF.

Counsel notes that the testimony of Mark Manning, City Budget Officer, indicated that the City's income has grown by approximately 6% from 2008 to 2010, and an additional 4.7% growth was anticipated for 2010 (City Exhibit 3). Mr Manning also indicated that the current level of surplus in the reserve fund was between 11%-12%, which is above the City normal goal of a 10% surplus. Mr. Manning testified further that the City was not operating in a deficit position and that all current funding did NOT require any deficit spending by the City in 2010. In addition, Mr.

Manning testified that the economy was in "recovery mode" and believed that Wichita had weathered the worst of the economic downturn in the economy, has been able to maintain bond ratings and the financial borrowing position of the City remains strong. Union Counsel has contends that there was no evidence presented by the City that granting the wage request of the Union would cause the surplus in the General Fund to drop to a level that would affect the City's bond ratings.

Counsel also contends that the bond requirement testified to was hearsay and the City has no actual legal restriction imposed even though it (The City) typically likes to restrict the budget to preserve a 10% balance of the prior years surplus transferred from the General Fund from year to year. (Manning Testimony). Union Counsel contends that even under the worst of scenarios presented by the City, the demands of the Union would not come close to depleting the City's general surplus below the voluntary or suggested required level of retention. Finally, Counsel notes that while Mr. Manning is understandably concerned about the tenuous nature of the current economic condition, he failed to provide testimony or evidence that funding was not available to meet the Union request(s). In fact, Counsel contends that the testimony provided support for the Union position that the City had the budgetary means to grant the Union compensation request without unduly compromising the City's reserves or jeopardize any reserve requirements.

The Union contends the City has the ability to pay under their current general surplus of approximately 12% (Union Exhibit 3 & testimony of Mark Manning). Counsel notes that the City has provided no evidence to the Fact-Finder that the cost incurred by the City in funding the Unions compensation request would not be financially viable. Counsel notes that the testimony of Mark Manning indicates otherwise given the fact that bond ratings remain strong and are well within the voluntary requirement of a 10% transfer reserve. In addition, Counsel affirms that the City has increased expenses for "exempt" personnel by the same 1% COLA increase in 2010, and found this to be well within all fiscal requirements regarding spending as set forth by the City at the hearing. Counsel note that, other than fears of a decline or worsening economy, the City has offered no substantive evidence of an inability to pay the Union compensation request. Accordingly the IAFF requests that a finding be entered in favor of the Union and that wage increase be retroactive and that payment and compensation increases be binding for the entire period of the Agreement.

C. THE CITY SHOULD NOT BE ALLOWED TO PLACE MEMBERS AND THE COMMUNITY AT RISK BY FAILING TO INCLUDE NON-RESTRICTIVE MINIMUM STAFFING LANGUAGE, AS PREVIOUSLY ENDORSED BY CITY MANAGEMENT AS PART OF THE 2010 MEMORANDUM OF AGREEMENT.

The Union has requested a minimum staffing stipulation be placed in the contract. Counsel has noted that this request was made with the hope that in a time when compensation was perhaps a hot button item, an alternative could be negotiated that was essentially non-compensatory in nature. As Counsel has noted, throughout the course of negotiation such language could not be agreed upon but it is still the Union's position that insertion of language stipulating to a requirement that there be 118 on duty firefighters at all times. Counsel contends that such a provision does not interfere with management rights and does not represent a requirement for firing or hiring or affect

management's ability to assign employees to any position or duty. Rather, it would merely represents an agreement by the City to abide by the rules that they have suggested to be appropriate.

While the City has argued that the issue of minimum staffing is an inappropriate issue for collective bargaining the Union disagrees noting that it is not the practice within the State of Kansas or Nationwide between municipalities and IAFF chapters. Counsel notes that the City, through its Counsel, admitted at the hearing that the subject of minimum staffing is something that had been routinely negotiated in IAFF contracts nationwide and the he himself (City Counsel) had negotiated the issue with the Kansas City Unified Government and their IAFF chapter and it is currently included in their Memorandum of Agreement, as well as in dozens of contracts throughout the country.

Counsel also notes that the Union request for language requiring 118 members per shift is not unreasonable given the fact that the City has established in past practice that this is a safe and realistic number of required staff to keep the employees, members of the community, and their property at a safe and functional level. Counsel has affirmed that the Union is not requesting an increase in numbers from what was previously set, endorsed and enforced by City Management as the minimum requirements for staffing. Counsel notes further, that while the City has recently reduced the number down to 115 per shift, the City has and does maintain that there is a minimum staffing requirement that is necessary for the fire department and the Union simply wants to put this number in writing and abide by the requirement.

Counsel notes the City Argument that reductions in the work force that may be necessary is a management prerogative, and the City maintains that it has the right to control the number of employees in their service. Counsel notes that while the Union does not disagree with this right and are not coming before the Fact-Finder to request additional hires or that personnel be added. The Union is merely requesting a recommendation from the Fact-Finder that the City Insert language into the Agreement that allows for the minimum staffing the City previously held to be appropriate which was 118. The Union contends this minimum is necessary in order to insure the protection of the health, well being and protection of the community and to insure that employees operate within a safe working environment.

Counsel also noted that the Union is not asking that a requirement be inserted (as has been negotiated in other contracts by the IAFF and municipalities) for where personnel are to be assigned, or how many personnel must be assigned to certain stations, rigs or positions. The Union would maintain all management control over the employee assignments. Counsel contends that the Union is only asking the City to abide by its own endorsed requirements and ensure the safe working conditions of the membership.

Counsel notes that case law cited by the City related directly to the reduction in the overall work force or total number of employees (Fraternal Order of Police, Lodge No. 40 v. unified Government, PERB 75-I-8-2006; KS BD of Regents V, Pittsburg State University Chapter of KNEA, 223 Kan. 804 (decided under PEERA (CITING KNEA Parsons v. USD 503, 225 Kan.582

(1971). Counsel notes that these cases only address employers ability to shrink the overall work force numbers based on budgetary necessity and contends this is not the case in the instant case before the Fact-Finder since the City has shown that they have the ability to staff and fund at the 118 level so the Union's request is not a matter of controlling overall work force numbers and since the Union's request does not infringe on management rights to control the overall number of staff employed it does not restrict the City's ability to assign employees to whatever staffing position they deem appropriate. Accordingly, Counsel contends that it is clear that the minimum staffing number requested by the Union does not violate management rights under PEERA, or run contrary to any PEERA provision, or any prior Kansas PEERA precedent.

Finally, Counsel holds that given the aforementioned, and the fact that the City has acknowledged through past practice that 118 is an appropriate number, the Union requests that the Fact-Finder Recommend that language be included in the Memorandum of Agreement stipulating that 118 employees per shift represents minimum staffing.

D. THE CITY SHOULD NOT BE ALLOWED TO DISREGARD ALL PREVIOUSLY AGREED TO ITEMS OF NEGOTIATION IN 2010 WITH NO GOOD CAUSE ARGUED FOR NOT APPROVING SAID PREVIOUSLY AGREED MEASURES.

Counsel had noted that despite the inability to agree on a total contract, the Union and the City did make significant and important progress regarding seven issues where there was an agreement. Counsel notes that the City made no argument at the Hearing against recommending the approval of the previously negotiated agreement except for the inability of the Union to pass the entire Agreement. Accordingly, it is the Union's position that these issues are important, and given agreement reached on seven issues it is the Union's request that the Fact-Finder recommend that all seven items be included in the 2010 Memorandum of Agreement as follows:

1. Increase in Well Days. An employee that does not use any sick leave for the Payroll Year earns an additional Well Day.
2. Increase in Emergency Leave. Agreed upon an additional 12 hours (24 hour employees) or 2 work days (40 hour employees) for the purpose of attending the funeral if the death is an immediate family member defined as: employees' spouse, children, step children, parents, step parent5s, state approved foster child, or any relative living in the employees's home.
3. Grievance Procedure Exchange of Information. Any employees requesting a grievance board shall exchange witnesses and exhibit lists with management at least one week prior to the scheduled hearing.
4. Union Notice of Meeting with Grievant. Local 135 representatives shall receive at least 24 hours notice prior to any meeting with Grievant except in the case of an emergency.

5. Earned Vacation for the substitution of time off without pay. An Employee receiving discipline in the form of unpaid suspension shall have the option of forfeiting up to 80 hours of accrued paid vacation for 40-hour employees or 120 hours of accrued paid vacation for 24-hour employees.
6. Signed notice of disciplinary. This adds language that by signing a document or report that management requests the employee to sign, all the employee is acknowledging is receipt of the document and does not indicated whether employee agree with document, report, or disciplinary action.
7. Garrity Warning. A Garret warning will be given to any employee that is being investigated for possible discipline action.

UNION CONCLUSION

The Union requests that the Fact-Finder issue a finding adopting a 1% cost of living increase for all unit members for the calendar year of 2010. In addition, the Union requests that the Fact-Finder issue a finding adopting contract language requiring a minimum staffing level of 118, and the adoption of all previously agreed upon items indicated herein. IAFF Local 135 also requests that all findings regarding any increase in compensation be made retroactive for the period of the 2010 Agreement since the IAFF is bound by a non-strike provision relative to public safety and should not be penalized for staying on the job and continuing in the performance o their duty to protect the public which they serve.

THE CITY'S ARGUMENT AND POSITION(s)

The City noted at the Hearing that the Union had rejected two tentative agreements in the negotiation sessions that culminated in Fact-Finding. City Counsel has also stated that prior to the Fact-Finding Hearing the Union did not identify specifically what parts of the Agreement led to Union rejection. Counsel noted that after the first rejection, additional concessions were made by the City in hopes of avoiding Fact-Finding and these concessions were also rejected by the Union.

The City has determined from fact-finding that the Union wants two concessions from the City: (1) A 1% cost of living adjustment ("COLA" or "GPA") increase across the board and ; (2) a provision in the Agreement requiring the City to Maintain 118 bargaining unit members each day Counsel claims the City only learned of the request for the 1% across the board increase at the fact-finding hearing and the information provided by the Union in Exhibit 9 was new to the City. In addition, Counsel contends that the Union's charges regarding Deputy Chief Aaron, and Division Chiefs Wenzel and Crisp, were also raised for the first time at the hearing. City Counsel affirmed that the issue of minimum manning was discussed during negotiations and the City was prepared to respond to this request.

A. THE UNION'S REQUEST FOR A 1% ACROSS THE BOARD COST OF LIVING ADJUSTMENT.

City Counsel has argued that the Union, in contrast to all other unions which negotiated labor contracts with the City since 2009, believes the City's taxpayers have the resources to award the firefighters a COLA/GPA cost of living increase.(City Exhibit 8, p. 2). Counsel notes that the remarks made at the Fact-Finding Hearing indicate that the Union believes the City has the funds to pay for the requested 1% increase based on a belief that the City will have increasing revenues. In addition Counsel notes the Union's reference to the City's spending on improvements at City Hall and the contention that exempt employees received a 1% COLA and are scheduled to receive another 1% COLA/GPA in 2011 and that Deputy Chief Aaron and Deputy Chiefs Crisp and Wenzel received double digit pay increases.

Counsel notes further that Union Counsel has argued the 1% increase is appropriate given (1) the benchmark from the International City managers Association (IMCA) for expenditures per capita at \$149.24 while the City intends to spend \$87.00 and (2) the comparison with other fire departments in 4 states, including Kansas, which pay more at various years of service. The City takes issue with all of the Union's contentions and City Counsel has noted that the Union has failed to provide any evidence of the cost to the City of the proposed 1% increase or the cost to the City of the 1% payment to exempt employees or the costs to the exempts of the furloughs.

1. THE UNION'S CONTENTION THAT THE CITY WILL HAVE INCREASING REVENUES.

City Counsel cites the fact that the Union attempted to make this case via the cross examination of Mark Manning, Budget Officer in the Finance Department. Counsel notes, however that Mr Manning explained during his presentation, and during cross examination, that the growth for which he hopes will occur is tenuous (City of Wichita Condition, Ex. 7, pg. 10). In addition he noted that there is a realistic probability that more layoff will occur in the aircraft industry in Wichita which will have adverse effects on the overall economy, including real estate values and spending which are major factors in the general fund revenue growth.

Counsel has argued that whether Mr. Manning's projections for revenue growth come to fruition is an open question and he admitted that he is no longer sanguine about those projections as he was when he developed the budget last spring given recent developments such as possible additional layoffs in the aircraft industry. In addition, Mr. Manning cited the fact that the City must operate under the Kansas Cash Basis law and if projected revenues do not meet budgeted expenditures spending must be cut or the City would need to dip into its reserves which are at a minimum level. Mr. Manning warned that a drop in reserve levels could effect the City's bond rating which could result in an increase in the cost of indebtedness.

Counsel notes that, while no evidence was provided by the Union, the City contends that the cost of the 1% COLA/GPA increase to only bargaining unit members would cost \$276,000 plus the

additional benefits and payroll tax burden for Captains and Below and around \$397,537 for the entire department computing the total of 2010 wages multiplied by 1% (See Union Ex, 7). Counsel notes that there would also be additional benefits and payroll tax burden. Counsel contends the City does not have the money to pay for this increase.

2. THE SPENDING OF MONEY ON CITY HALL IMPROVEMENTS

Counsel notes that the only "evidence" in this regard was a remark by counsel concerning these improvements but the reality is these improvements were approved in 2004 with construction beginning in 2006 and the contractual commitments were made long before the current financial crisis. (See Exhibit 14).

3. THE UNION CONTENTION THAT ALL EXEMPT EMPLOYEES RECEIVED A 1% COLA/GPA

Counsel notes that the Union contention is spurious. In fact, Counsel notes that exempt employees may receive a merit increase up to 1.5% (City Exhibit 8 at p.2). Counsel notes that not all exempt employees received the 1% but there is a 1% merit adjustment for 2011. However, Counsel noted that what is budgeted and what is spent are two different events noting that the minimal level of reserved required and the Cash Basis law may result in the future budgeted amount for a merit payment for exempts not being paid because money may not be available. In addition Counsel notes that exempts have been and will be subject to unpaid furloughs which reduce their wages (City Exhibit 8, pp 6-8) and exempts do not receive step increases or pay enhancements that union members receive, thereby reducing the cost to the City. Finally, Counsel notes that the Union does not suggest a willingness to trade step increases in exchange for a 1% COLA/GPA.

4. DEPUTY CHIEF AARON AND DIVISION CHIEFS CRISP AND WENZEL PAY INCREASES

Counsel cites Union Exhibit 6 which was presented in support of the Union's COLA/GPA claim noting the wage base per hour for each individual but did not include enhancements for longevity, clothing, education, special duty, holiday or personal holiday benefits. Nor did it include overtime for which bargaining unit members are compensated while exempt employees are not

With respect to Deputy Chief Aaron's case he received an additional \$11, 292.893 for longevity, clothing, holiday, personal holiday, well day and overtime. Therefore, in his last full year as a bargaining unit member, his actual gross pay was \$69,443.68. Division Chief Wenzel's compensation his last full year was \$69, 290.12 which included enhancements for adjusted overtime, excess time, longevity, education, clothing, holiday, Kelly Days, 24 hour personal holiday, overtime and half time totaling \$9,196.79. Division Chief Crisp received additional compensation of \$20,493.88 in his final full year in the bargaining unit. Pay was for adjusted overtime, special duty, longevity, education pay, clothing, holiday, personal holiday, and overtime with total compensation of \$86,857.54. (City Exhibit 15). Counsel noted in post-hearing brief that had the Union raised the

issue of pay for these individuals the City could have provided this information during negotiations or at fact-finding.

Counsel notes that the City pay plan has individuals in ranges (City Exhibit 16) noting that Deputy Chief Aaron is in Range D71 while Chiefs Wenzel and Crisp are in range D63. (See Union Exhibit 7). Counsel notes that what is most important is that Chief Aaron's initial raise converts to an annual salary of \$77,500.00 in 2008 (Union Exhibit 6 ;he was in the bargaining unit until July of 2008) or about \$8,000.00 a year above what he actually received as a bargaining unit member (\$69,443.68). And according to Union submissions Chief Wenzel's raise converts to an annual salary of \$68,190.51 and this would actually be a net loss in actual take home pay of slightly over \$1,000.00 (\$69,290.12 in gross pay as a bargaining unit member). And according to Union submissions Chief Crisp did not receive a raise when he was promoted and because he lost the pay enhancements and overtime this would result in a \$20,000 reduction in actual gross wages paid (\$86,857 in gross pay as a bargaining unit member, with \$20,493.88 as enhancements and overtime vs. \$66, 903.82 in base pay at 2080 hours x\$32.1653 per hour (Union Exhibit 3).

What is most important according to Counsel is that these individuals are not exempt employees and now will not receive pay enhancements or overtime no matter what functions they perform or how many hours they work. Counsel notes also that these individuals also moved up several positions in the chain of command when they were promoted and the raised were appropriate and reasonable.

Counsel notes that the Union conceded during fact finding that there must be an incentive for individuals to move into command ranks. And to argue that a 6% raise is all an individual should receive when promoted to one of these positions is unreasonable and if they would have done so they would have suffered a net loss, or would have realized a minimal increase in gross pay. Finally, counsel contends that the salary and raises given to individuals in command positions in no way provides justification for a 1% across the board COLA./GPA increase for all bargaining unit members.

5. TARGET FIGURES FOR COST PER CAPITA OF FIRE PROTECTION FROM ICMA

City Council takes issue with the Union assertion that a benchmark figure of \$149.24 per capital should be spent for fire protection services according to the International City Manager's Association (ICMA) which was contained in the City's 2011-1010 budget document. Counsel notes that the union did not provide the actual page so the City has provided it to the Fact-Finder in Exhibit 17. The Union's position was that this was the amount the City should spend for fire protection. In reality, Counsel notes that the benchmark of \$149.24 from the ICMA is a mean average spent by cities with populations over 100,000 and it is not a goal or a suggestion by ICMA that this amount be spent—it simply represents the average spent (City Exhibit 18).

In addition, Counsel notes that the IMCA does not suggest that cities respond to fire cal in 5 minutes or less only 58.2% of the time. It merely indicates the average response rate and it does

with expenditures per capita. Counsel notes further that the average cost per capita includes cities which provide both fire and EMS services and the City of Wichita only provides fire suppression services. Moreover, the cost per capita will vary with population density (City Exhibit 18). Counsel notes further that the ability of the City to respond to the Union's contentions regarding other cities was compromised by the Union's failure to raise this issue and provide information prior to the fact-finding hearing.

Counsel cites the fact that the Union made reference to not being provided what was presented in City exhibits during argument before the Fact-Finder. However, counsel notes that the Union admitted that the City had contended that minimum manning was not a mandatory subject of bargaining during negotiations and that the City could not afford any pay increase. Counsel notes that Exhibits 9-12 are copies of legal research relating to legal contentions rather than factual assertions. In addition, Exhibits 1-6 are E-mails between the City and the Union and could not be a surprise. Exhibit 7 is new to the Union only in the sense that it lays out the City position to the Fact-Finder from materials in the City's budget and this detail was not provided to the Union during negotiations since the Union did not make any demand for a COLA/GPA increase. Exhibit 8 sets out materials that are in the public record as part of other union contracts and budgets.

Counsel contends that from the information provided by the Union there is no way to determine the average cost per capita of other cities with a population over 100,000. Counsel asserts that the City does know the response rate in Wichita—the City is able to provide response times of 5 minutes or less in 78.2% of the time where the average for all cities over 100,000 is a response time of 5 minutes or less in only 58.4% of the time which indicates that Wichita's average response time is better than average and this is the only information that can be determined from Exhibit 16.

6. THE CONTENTION THAT CITIES IN FOUR OTHER STATES PAY FIRE DEPARTMENT MEMBERS BETTER THAN THE CITY OF WICHITA

Counsel notes that, like Exhibit 17, this information was presented to the City for the first time at the fact-finding hearing but the Union was unable to indicate to the Fact-Finder why some information is contained in the charts while other information is not. For Example, Counsel notes that the Union could not explain the differences in hours worked, e.g., 2,764 in Kansas City, Kansas, 2,596 in Topeka, 2,712 in Tulsa, 2,582 in Kansas City, Missouri and 2,920 in Wichita, Kansas. Counsel notes that the number of hours worked attributed to Wichita is a mystery since the contract specifies 2,912 working hours a year (see Memorandum of Agreement, Joint Exhibit 1).

Counsel contends that the chart also does not include retirement contribution, education pay Kelly Days, Specialty pay for paramedics or life or health insurance benefits and as such does not provide a meaningful snapshot of the compensation that the Union membership receives in comparison to other jurisdictions. In addition, Counsel notes that there is no comparison data on population density, cost of living variables, tax revenues or assessed valuations which must be considered in any comparison. In this regard Counsel notes that, according to internet research, populations of the cities chosen range from 92,048 in Lawrence, Kansas to 837,925 in Omaha, Nebraska whereas the

population in the City of Wichita is estimated at 344,284 and population densities range from 1,942 people per square mile in Colorado Springs to 3,370.7 in Omaha. Wichita's population density is 2,536 per square mile. Counsel contends that these wide variations and lack of relevant comparison data makes it impossible to make meaningful comparisons of cost, benefits or response time.

CITY'S SUMMARY CONCLUSION

The City urges the Fact-Finder to find that the language from the 2006-2009 Memorandum of Agreement between the parties currently in effect is reasonable given the City's current financial situation. City Counsel has noted that the City has made language concessions to the Union in good faith on two occasions, once in November 2009 and again in September 2010 with the understanding that the concessions would result in an agreement and now the Union wants further concessions in demanding an across the board 1% cost of living increase and language stipulating minimum manning. The City contends that if an offer is rejected there is nothing left to accept. Counsel notes the City made two compromise offers with the understanding that the Union would accept the concessions the City offered in exchange for the concessions the Union offered through an affirmative vote of ratification. However, Counsel contends that when union ratification did not occur, the concessions made by both parties were no longer valid.

City Counsel argues that to accept the Union's position that they should be allowed to keep the concessions notwithstanding the result of the fact-finding will only promote and encourage impasse and in, effect, a party would have nothing to lose by declaring impasse if they are confident that they can keep the concessions made during negotiations before going to impasse. In addition, Counsel cites the fact that the City has addressed its financial condition by cutting employees, freezing exempt COLA/GPAs, borrowing from capital funds and hoping that economic conditions will continue to improve although the City is concerned about the condition of the Aircraft industry in Wichita and the prospect for more layoffs which will impact the City economic base and revenue growth.

Finally, the City contends that there is no evidence the Memorandum of Agreement currently in effect has not worked satisfactorily from 2006-2009 and it has received the necessary approvals from the City and the Union. Counsel notes that negotiations for a new contract will start when this fact-finding process is completed.

FACT-FINDERS'S CONSIDERATION AND DISCUSSION

In consideration of all the testimony and evidence in this case the Fact-Finder notes the following:

1. The City's claim that it can not afford to fund the Union's request for a 1% cost of living increase for Union members at this time is based on the concern that the Economy in Wichita may be compromised by a possible continued decline in employment in the aircraft industry given recent developments even though (as Mr. Manning has testified) the general economy was showing signs

of improvement when he developed the budget last spring and indicated that revenue growth was projected to improve. Specifically, Mr. Manning indicated that the City's income had grown roughly 6\$ from 2008 to 2010 and that an additional 4.7% growth was anticipated for the full year 2010 (Manning Testimony, Union Exhibit 3). Clearly the City's concern relative to the possible increase in layoffs in the Aircraft industry represents a viable consideration that must be taken into account in such projections and, as Mr. Manning indicated, he was no longer confident in the projections given this consideration.

The Fact-Finder notes that the Aircraft industry dominates the industrial base in Wichita and plays and has the ability to influence the economic base of Wichita and the region. Clearly there have been ominous developments in the industry with layoffs at Hawker Beechcraft and Cessna this year and Boeing announced in October that it was realigning its military aircraft division and there would be additional layoffs with the realignment. In addition there is legitimate concern as expressed by Mr. Manning the additional layoffs may be in the offing which could negatively impact the City's projection of economic growth.

Currently, as noted in the December 5, 2010 Wichita Eagle Netjets' Embraer order is bad news for the Wichita Aircraft industry since the order with Embraer for 125 Phenom 300 light business jets since it means Cessna and Beechcraft are having to give up market share to Embraer. As Teal Group analyst Richard Aboulafia indicated in this news report: "When you are in the part of the market that's imploded and someone else is aggressively attacking your share, that's a worse case scenario. The 125 jet order is worth more than \$1 billion dollars. This and other possible future development in the Aircraft industry is reason for concern and must be taken into account in consideration of the issues in this case.

The City has indicated that funding the Union's 1% across the board cost of living increase for bargaining unit members would cost the City approximately \$267,000 plus the additional benefits and payroll tax burden (Union Exhibit 7). This cost increase is not insignificant in consideration of the budgetary concerns of the City going forward. The City appropriately noted that exempt employees may receive a merit raise up to 1.5% (City Exhibit 8, p.2) and while not all received a 1% increase most did receive this increase (Union Exhibit 4). The Union has noted that in February 2010 the majority of middle management exempt employees citywide received a 1% increase in pay which includes the Fire Department with the majority of Battalion, Division and Deputy Chiefs receiving the 1% increase.

In addition there was a 1% increase budgeted for 2011 for exempt employees. And, while City Counsel has noted that what is budgeted and what is spent may differ depending on budget and reserve limitations (Cash Basis law) which may result in budgeted merit payment not being paid. While this may be the case it does indicate a willingness and an intent by the City to pay this increase, budgetary considerations permitting. City Counsel has noted that exemptions have been and may be subjected to unpaid furlough days which will reduce wages if the need arises and they do not receive the step increase pay enhancements of Union members.

2. The Fact-Finder does not find viable the Union argument that raises for exempt command personnel (Deputy Chief Aaron, and Division Chiefs Crisp and Wenzel) represents justification for a 1% COLA/GPA increase for Union members. These pay increases are considered appropriate and justified given the extra responsibility and expectation that comes with such promotion and, as indicated in City testimony, since they are now exempt employees they may can not receive pay enhancements or overtime as they were able to receive as non-exempt employees and to argue that a 6% raise is all they should receive for such promotions in the face of a loss of enhancements and overtime pay would mean, as the City has noted, that these personnel would suffer a net loss, or minimal increase in gross pay eliminating any incentive to move to more responsible and demanding exempt command positions.

3. The Fact-Finder must also take into account the negotiations and tentative agreement(s) that have taken place between the parties prior to fact-finding. In particular, it is clear that these negotiations resulted in conditional concessions and tentative agreements between the parties that are relevant to consideration of the Union's request for a 1% across the board COLA/GPA increase for bargaining unit personnel and the request than a Minimum Manning provision be included in the Agreement stipulating that the City Maintain 118 bargaining unit members each day. The City indicated at the fact-finding hearing that it only learned of the 1% across the board COLA/GPA increase request at the time of the hearing—a claim that the Union did not deny or provide any evidence to the contrary that specific negotiation took place relative to this issue. In fact, it is clear that during the course of negotiations the City communicated to the Negotiating team that a cost of living adjustment would not be offered as part of a contract offer, even though most exempt employees received a 1% pay adjustment in 2010.

As indicated in Union Exhibit 1, in response to the City's indication that it would not offer a pay increase, the Local considered what it would take to take for membership to approve a 0% pay adjustment in 2010 and determined that the contract offer would have to contain language that includes a minimum staffing clause. Local 135 compared this inclusion of minimum staffing language to the arbitration language included in the F.O.P. #5 Wichita Police Union contract for 2010 where they approved a 0% pay adjustment for 2010 with the inclusion of the arbitration language. The Union maintains it communicated to management during negotiation that if any of the three previous minimum manning clauses were offered to the Union the Negotiating team would schedule a vote with a favorable recommendation to approve a contract that included a 0% wage adjustment for 2010, but that such acceptance was dependent upon the City's Agreement to acceptable minimum staffing language.

In addition, the Union now contends this was to be in addition to the seven previously negotiated and Agreed upon items between the parties even though the City has taken the position that all previous negotiated items are dead since the Union rejected the City's "last best offer" made on November 16, 2009 via Union vote on January 19, 20, and 21 2010. The Local subsequently requested a return to the negotiating table and the City requested a "list" of items to be considered and a list was submitted followed by a decline by the City to negotiate further and impasse was declared on February 24, 2010. Mediation followed with the City offering only items that were

previously negotiated and voted down by union membership with the addition of one minor item relative to the publication of the promotional list and mediation was declared a failure and the decision to move to fact-finding was made.

It is not clear from the evidence or testimony exactly what the Union or the City had tentatively agreed to in negotiation. However, the fact is that the City offer was rejected by the Union and this means all provisions that were on the table and agreed to by the parties are subject to re-negotiation. The evidence is clear that Union ratification was subject to approval of a minimum manning provision in order to accept a 0% COLA/GPA increase. HOWEVER, GOOD FAITH BARGAINING AND PRESERVATION OF GOOD WILL BETWEEN THE PARTIES DICTATE THAT PREVIOUS NEGOTIATED AGREEMENTS AND CONCESSIONS BETWEEN THE PARTIES SHOULD BE MAINTAINED EXCEPT WHERE THEY DO NOT CONSTITUTE AN SUBSTANTIAL ECONOMIC BURDEN OR IMPOSE A LIMITATION THAT IMPAIRS MANAGEMENT OR UNION RIGHTS AND RESPONSIBILITIES. In the Judgement of the Fact-Finder the 7 items that the Union contends were previously agreed upon prior to impasse do not represent such a substantial burden or limitation and should be honored in a final negotiated agreement between the parties.

4. The Fact-Finder does not find the evidence compelling that the City cannot afford a COLA/GPA increase for firefighters. While the economic picture in Wichita remains a bit clouded as it is in the rest of the Nation there have been substantial signs of economic recovery and improvement in the last several weeks notwithstanding the fact that unemployment remains relatively high (9.8 % nationally and 8.8% in Wichita). General fund revenue and reserves for the City of Wichita are at reasonable levels. Reserves are not currently in danger of falling below minimum levels which would could result in a decline in bond rating (City Exhibits 7-10: Union Exhibit 3 and Mr. Manning's testimony). Should a new economic downturn or other developments impact negatively the Wichita economy steps can be taken to reduce costs or increase revenue in order to maintain vital City functions and services such as fire and police. Based on the City's current financial condition and the evidence that the economy is showing early signs of improvement the Fact-Finder can not justify a "doomsday" scenario justifying a need to cut services or limit investment in such services.

In addition, it is evident from the data submitted by the Union that Wichita fire fighter are paid less at various year of service levels and the Fact-Finder rejects the argument that these comparisons are not realistic or viable given differences in population density, size of population or other compensation variables. The comparison data (Union Exhibit 9) indicates that at the base salary level and total compensation at years of service 6, 11, 16, 20 and at maximum base salary Wichita Firefighters fall somewhat behind the average of their counterparts in the region based on the data from comparison cities.

While the differences in average total compensation are not substantial and some cities pay less in base and total compensation the data does provide evidence in support of the Union argument that Wichita should not fall further behind in order to be competitive. However, while this data is

taken under advisement the data also indicates that Wichita fares marginally better than Tulsa, Oklahoma and Sedgwick County, Kansas at the 6 year level, Sedgwick County, Kansas and Topeka, Kansas at the 16 and 20 year level and at the Maximum salary total compensation level. Total compensation is higher in Kansas City Kansas, Kansas City Missouri, Oklahoma City, Tulsa Oklahoma, Colorado Springs, Colorado and Omaha Nebraska at the 6, 11, 16, 20 and maximum base salary levels.

FINDING(S) OF THE FACT FINDER

In consideration of all the evidence and testimony in this case the Fact-Finder finds the following:

A. The City has the resources to fund the Union's request for a 1% COLA Increase for bargaining unit member of IAAF Local 135. However, given strains in the economy, the rate of unemployment and concerns regarding the impact of further layoffs in the aircraft industry the Fact-Finder is compelled to render a compromise finding in this regard even though consideration of the City's budget and reserves indicates that the City has the financial means to fund the Union request. In addition, the Fact-Finder is solicitous about the need for some measure of equity in compensation in the interest of morale. Most exempt personnel have received a 1% increase in pay. While compensation packages differ and exempt employees do not have the benefit of step increases afforded bargaining unit members equity and fairness would dictate that union members should be given some salary compensation increase consideration.

B. The Union request for minimum manning is defensible and prudent in order to insure minimum staffing in order to ensure that sufficient personnel are maintained on duty and available to respond to alarms. And, as the Union has indicated minimum staffing ensures that sufficient personnel are available at all units and serves to maintain and protect the safety of fire fighters ensure the efficiency of a fire fighting operations.

Minimum staffing language is common in union contracts. City Counsel indicated at the hearing that minimum staffing is something that has been routinely negotiated in IAFF contracts nationwide and the he had negotiated the issue with the Kansas City Unified Government and their IAFF chapter and such a provision is included in the Kansas City Memorandum of Agreement. The Union notes that this is also the case in Wyondotte County, Kansas, Junction City Kansas, Lawrence and Manhattan and elsewhere around the country. In addition the Wichita Fraternal Order of Police recently approved a 0% pay adjustment contract for 2010 with the inclusion of minimum staffing language achieved through arbitration.

While Minimum Manning is often considered a permissive rather than a mandatory subject of bargaining given Management's right to determine staffing levels it is the position of the Fact-Finder that this issue was addressed in negotiation between the parties and the Union's Minimum Manning proposal should be considered by the City as an alternative to the recommendation noted

herein with respect to salary compensation for union members.

DETERMINATION AND RECOMMENDATIONS OF THE FACT-FINDER

While the Fact-Finder is compelled to endorse the Union's request for a 1% COLA/GPA increase and endorse the Union request for a Minimum Manning provision the Fact-Finder must recognize the City's viable concern with respect to the City economy and ability to pay going forward given uncertainty regarding unemployment, strength of the housing market and the associated health of the aviation industry given recent developments. In addition, the Fact-Finder is compelled to take into account the fact that the Union offered in negotiation to accept a 0% increase in compensation in return for inclusion of a minimum manning provision in the Agreement. Given due consideration of these factors the Fact-Finder finds it imperative that ONE (1) of the following provisions should be included in the new Contract between the parties:

1. While the Fact-Finder cannot endorse the Union's request for a full 1% COLA increase given economic considerations the Fact-Finder finds the evidence justifies at least a 0.5 (½ %) COLA increase for union members. This determination is also based on the fact that most exempt employees received a 1% increase in compensation but do not receive the step increases and other benefits received by union members. In addition, the Fact-Finder notes that the City has also budgeted a 1% increase for exempt personnel for 2011.

Accordingly, the City should implement a 0.5 (½ %) increase in COLA/GPA for union members for 2010 to be retroactive for the period of the 2010 contract (for calendar year of 2010). This increase is deemed appropriate and necessary and will provide a measure of compensation (albeit minimal) that will serve to ensure some measure of fairness and parity in recognition of the 1% increase in compensation for exempt personnel for 2010 and a 1% budgeted increase for 2011 taking into account that compensation packages are different. Implementation of the 0.5 (½ %) increase would represent half the cost of a 1% increase for union members. OR IN THE ALTERNATIVE;

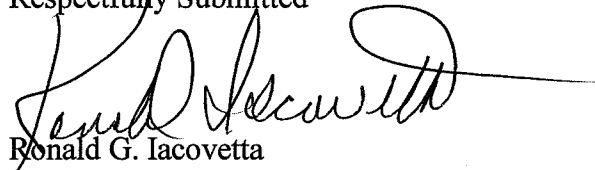
2. The City Should Agree to and include the Minimum Staffing provision requested by the Union in the Agreement between the parties and take the necessary steps to implement Said provision by the end of the Calendar year (2010) and have it in place in the field no later than January 2011.

In addition, the Fact-Finder finds it prudent and in the interest of "good faith" bargaining that the City ratify and include in the Agreement the 7 provisions noted herein that the parties had agreed to in negotiation prior to reaching impasse on contract ratification.

SUMMARY FINDING

In consideration of all the testimony and evidence in this case, consideration of the City's budget and economic forecast, concerns relative to the aircraft industry and employment and bargaining history between the parties, the Fact-Finder concludes that the City should implement a 0.5 (½ %) COLA/GPA increase for union members for 2010. OR IN THE ALTERNATIVE, include the Minimum Manning provision requested by the Union in the Agreement which calls for 118 per shift AND ratify the 7 provisions previously agreed to in negotiation between the parties.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Ronald G. Iacovetta", written over the printed name.

Ronald G. Iacovetta

Fact-Finder

December 3, 2010

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Analysis of Impediments to Fair Housing Choice

INITIATED BY: Housing and Community Services Department

AGENDA: New Business

Recommendation: Approve the Analysis of Impediments and authorize submission to the U.S. Department of Housing and Urban Development (HUD).

Background: The Housing and Community Development Act of 1974, as amended, is the dominant statute for the Community Development Block Grant (CDBG) program. It requires that each federal grantee certify to HUD's satisfaction that 1) the awarded grant will be carried out and administered according to the Fair Housing Act, and 2) the grantee will work diligently to affirmatively further fair housing. This certification to HUD may be implemented through the Consolidated Plan process, by developing an Analysis of Impediments to Fair Housing Choice (Analysis).

Under the Consolidated Plan, HUD-funded recipients are required to: 1) examine and attempt to alleviate housing discrimination within their jurisdiction; 2) promote fair housing choice for all persons; 3) provide opportunities for all persons to reside in any given housing development, regardless of race, color, religion, sex, disability, familial status, or national origin; 4) promote housing that is accessible to and usable by persons with disabilities; 5) and comply with the non-discrimination requirements of the Fair Housing Act.

Analysis: The City of Wichita's 2009-2013 Consolidated Plan was submitted to HUD in May, 2009 and was subsequently approved. The Fair Housing component of the Consolidated Plan provided a brief summary of fair housing efforts and indicated that an update to Wichita's 1996 Analysis of Impediments to Fair Housing Choice would be performed. Later, HUD officials announced that new guidance was being developed for the preparation of each jurisdiction's Analysis of Impediments. However they advised that prior to the guidance, jurisdictions should update their Analyses.

The attached document was prepared to ensure that Wichita is in compliance with HUD expectations. It represents: 1) a summary and update of the recommendations from Wichita's 1996 Analysis of Impediments; 2) a review of current data regarding fair housing complaints; and 3) recommendations for the City's continued practice of affirmatively furthering fair housing choice. Following is a sample of data included in the Analysis.

- The objectives and/or recommendations from the 1996 Analysis have been implemented and continue to be followed.
- A review of Kansas Human Rights Commission records reflects only one housing discrimination complaint filed in 2008 and 2009.
- Complaints can also be filed with HUD and according to their website, from January, 2006 through October 23, 2009, 58 housing discrimination complaints were filed from Sedgwick County. The majority were related to disabilities.

The Analysis also lists 14 Action Steps that relate to the prior Analysis as well as to trends identified in a current review of agency reports and records on fair housing issues. Some of the Action Steps reflect continuation of current practices. Following are several of the new planned actions.

- Broadcast fair housing informational spots on City 7 and encourage mainstream media to do the same.
- Convene annual meetings with agencies which are involved in housing-related services for persons with disabilities, to share information and resources.
- Follow up on trends or comments identified in the City's 2010 citizen survey.

Financial Considerations: Failure to have and follow a policy designed to affirmatively further fair housing choice places a jurisdiction in violation of HUD mandates for Consolidated Plan funding and could jeopardize future funding.

Goal Impact: Approval of the Analysis of Impediments to Fair Housing Choice will impact the Economic Vitality & Affordable Living goal.

Legal Considerations: The Law Department has reviewed and approved the Analysis of Impediments as to form.

Recommendations/Actions: It is recommended that the City Council approve the Analysis of Impediments and authorize submission to the U.S. Department of Housing and Urban Development (HUD).

Attachments: Analysis of Impediments to Fair Housing Choice.



Analysis of Impediments to **FAIR HOUSING CHOICE**



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INTRODUCTION AND EXECUTIVE SUMMARY

The city of Wichita was incorporated in 1870 and is the largest city in Kansas, with over 350,000 residents according to 2006-2008 Census data. It is also the (Sedgwick) County seat. These facts result in many persons looking to Wichita for solutions to a variety of issues as well as for leadership on matters critical to achieving a high quality of life. For these reasons and more, the City has prepared this ***Analysis of Impediments to Fair Housing Choice***, to guide and measure efforts to ensure that all residents have access to quality housing that they can afford. This purpose is consistent with HUD's Community Planning and Development (CPD) goal to expand mobility and widen a person's freedom of choice.

This summary details efforts which have been made in the past to identify and address impediments to fair housing choice. It is designed to build upon the last analysis which was prepared in 1996. Staff of the Housing and Community Services Department prepared this document with a careful eye toward evaluating the current state of each of the impediments identified previously. The results are very encouraging.

Most of the impediments have been addressed as prescribed in the original document. Examples include:

- Improved communication systems have resulted in information being shared through partnerships with community organizations.
- Community awareness continues to be promoted with special recognition and activities during Fair Housing Month (April).
- There has been an increase in the amount of housing available for persons with low to moderate incomes through the Wichita Housing Authority, private tax credit-funded developments and revenue bond financed housing projects.
- Partnerships include realtors and advocacy groups, as well as the local chapter of the National Urban League.

Even with the accomplishments noted above and in the following pages, the City plans to be proactive in enhancing its efforts to increase fair housing choice. The action steps listed on pages 22-23 outline activities that are planned to continue the momentum of the past and lay a foundation for even more progress. In addition, the City is currently surveying citizens for feedback on a variety of City/community issues. That survey document includes a question which specifically addresses barriers to housing choice. This analysis will be updated as necessary when the survey results are available and when new guidance is issued by the U.S. Department of Housing and Urban Development (HUD).

In the course of preparing this document information from the Kansas Human Rights Commission served as the greatest source of pride and motivation. That document reflects that one housing discrimination case was filed with their agency in 2008 and none were filed 2009 and as of September, 2010. It is the City's goal to maintain this record.

DEFINITIONS

In order to achieve fair housing choice through development of the ***Analysis of Impediments to Fair Housing Choice***, HUD has provided the following description of the City's responsibility.

- Conduct an analysis to identify impediments to fair housing choice within the jurisdiction.
- Take appropriate actions to overcome the effects of any impediments identified through the analysis.
- Maintain records reflecting the analysis and actions taken in this regard.

HUD further clarifies that compliance with the above will mean that the City will:

- Analyze and eliminate housing discrimination in the jurisdiction;
- Promote fair housing choice for all persons;
- Provide opportunities for inclusive patterns of housing occupancy regardless of race, color, religion, sex, familial status, disability and national origin;
- Promote housing that is structurally accessible to, and usable by, all persons, particularly persons with disabilities; and,
- Foster compliance with the nondiscrimination provisions of the Fair Housing Act.

STRATEGY

The City of Wichita ***2010 Analysis of Impediments to Fair Housing Choice*** provides a review of current conditions impacting housing choice, it details progress made on prior analyses and it presents plans to continue the City's efforts to affirmatively further fair housing.

Following is a demographic overview of the Wichita community related to population, income and employment from American Community Survey and U.S. Census data. A general review of housing conditions is also included. Following each set of data is a brief discussion as to the relationship between the data and fair housing choice in Wichita.

DEMOGRAPHICS

City Overview

All information is from the 2006-2008 American Community Survey, unless otherwise noted.

Population Data

- Population
 - Total: 359,306
 - Male: 49.36%
 - Female: 50.64%

- Median Age: 34.5
 - Population 18 years and over: 263,184
 - Population 62 years and over: 50,119
- Race
 - White: 73.5%
 - African American: 10.9%
 - American Indian/Alaska Native: 0.7%
 - Asian/Pacific Islander: 4.6%
 - Some other race: 6.2%
 - Two or more races: 4.1%
- Ethnicity
 - Hispanic/Latino (any race): 12.2%
- Households
 - Total households: 147,885
 - Family households: 61.7%
 - Nonfamily households: 38.3%
- School Enrollment
 - Total children 3 years and over enrolled in school: 98,530
 - Primary: 53.7%
 - Secondary: 21.5%
 - Post-secondary: 24.7%
- Educational Attainment (population 25 years and over: 228,607)
 - No HS diploma or GED: 13.7%
 - HS diploma or GED: 28.6%
 - Some college: 24.2%
 - College degree (associates, undergraduate or graduate): 33.6%
- Disability Status (2000 Census)
 - Population 5-20 years with a disability: 6,347
 - Population 21-64 years with a disability: 36,792
 - Population 65 years and over with a disability: 16,374

Population Demographics Discussion Related to Fair Housing Choice

Wichita is an average size city, though it is the largest city in the state. Residents are equally split by gender which would suggest that discrepancies in access to housing by men or women may point to discrimination. However other factors would need to be considered as well.

Regarding race and ethnicity Wichita's 70% white population is less than the national rate of 77%, and its 10% African American population is less than the national rate of 14%. Wichita's 12% Hispanic population is also less than the national rate of 15%. This suggests that Wichita's population is slightly less diverse than the country as a whole. City strategies to increase fair housing choice based on race and ethnicity will therefore have a smaller target population but the size will also make implementation achievable.

Income Data (2008 real dollars)

- Household Income (Total households: 147,885)
 - Less than \$10,000: 7.6%
 - \$10,000 to \$24,999: 19.0%
 - \$25,000 to \$49,999: 28.9%
 - \$50,000 to \$99,999: 29.5%
 - \$100,000 or more: 15.0%
 - Median household income: \$43,935
- Family Income (Total families: 91,281)
 - Less than \$10,000: 5.0%
 - \$10,000 to \$24,999: 13.3%
 - \$25,000 to \$49,999: 24.8%
 - \$50,000 to \$99,999: 35.6%
 - \$100,000 or more: 21.3%
 - Median family income: \$57,466
 - Per capita income: \$25,288
- Other income data
 - Median nonfamily income: \$28,545
 - Median earnings for male workers: \$44,406
 - Median earnings for female workers: \$32,122
- Poverty
 - Families with income below poverty level: 11.6%
 - Married couple families: 5.1%
 - Female headed households: 32.5%
 - Individuals with income below poverty level: 14.9%
 - Under 18 years: 19.9%
 - 18 to 64 years: 13.8%
 - 65 years and over: 9.1%

Income Discussion Related to Fair Housing Choice

Unfortunately Wichita exceeds the national rates of families (11.6% vs. 9.6%) and individuals (14.9% vs. 13.2%) with income below the poverty level. It can therefore be concluded that fair housing choice will be in many ways determined by economic conditions for many families and individuals in Wichita. Strategies to address the income factor will include housing subsidies and other incentives, as well as continued support for the development of housing that is affordable for persons with low incomes.

Employment Data (individuals 16 years and over)

- Labor force
 - Employed: 64.3%
 - Unemployed: 4.7%
 - Armed forces: 0.5%
 - Not in labor force: 30.6%
- Commuting
 - Drove alone: 84.0%
 - Carpooled: 9.7%
 - Public transportation: 0.9%
 - Mean travel time to work: 17.3 minutes
- Occupation
 - Management, professional, and related occupations: 32.9%
 - Service occupations: 15.7%
 - Sales and office occupations: 25.3%
 - Farming, fishing, and forestry occupations: 0.1%
 - Construction, extraction, maintenance, and repair occupations: 10.6%
 - Production, transportation, and material moving occupations: 15.5%
- Class of Worker
 - Private wage and salary workers: 82.2%
 - Government workers: 12.4%
 - Self-employed workers in own non-corporate business: 5.3%
 - Unpaid family workers: 0.2%

Employment Data Discussion Related to Fair Housing Choice

Wichita's statistics compare favorably with national figures with one significant exception. The rate of workers using public transportation for work nationally is 4% while in Wichita it is 0.9%. This is due in large part to the limited public transportation options available in Wichita. The Wichita Area Metropolitan Planning Organization (WAMPO) recently prepared and issued the Metropolitan Transportation Plan 2035. Included in the recommendations of that Plan is a transition of the existing Wichita Transit radial bus network to a grid bus network. Expanded service hours (later in the day and longer on weekends) are also contemplated. The entire planning strategy is the result of planners working with public and private sector stakeholders as well as input from the general public. Housing choices will increase when access to jobs and services increases, as a result of increased public transportation options.

Housing Profile

- Occupancy
 - Occupied housing units: 90.2%
 - Vacant housing units: 9.8%
- Units in Structure
 - 1-unit (attached/detached): 70.6%
 - 2 units: 3.8%
 - 3 to 9 units: 9.4%
 - 10 or more units: 12.9%
 - Mobile home: 3.3%
- Year Structure Built
 - 2000 or later: 7.7%
 - 1980 to 1999: 26.3%
 - 1960 to 1979: 22.0%
 - 1940 to 1959: 31.9%
 - 1939 or earlier: 12.1%
- Bedrooms
 - 0 or 1 bedroom: 16.4%
 - 2 bedrooms: 30.2%
 - 3 bedrooms: 35.5%
 - 4 bedrooms: 12.5%
 - 5 or more bedrooms: 5.3%
- Tenure
 - Owner-occupied: 63.3%
 - Renter-occupied: 36.7%
- Substandard Housing
 - Lacking complete plumbing facilities: 0.4%
 - Lacking complete kitchen facilities: 0.6%
 - Lacking telephone service: 6.1%
- Occupants Per Room
 - 1.00 or less: 97.8%
 - 1.01 to 1.50: 1.7%
 - 1.51 or more: 0.5%
- Value (owner-occupied units)
 - Less than \$50,000: 10.7%
 - \$50,000 to \$99,999: 34.4%
 - \$100,000 to \$149,000: 27.5%
 - \$150,000 to \$199,000: 13.7%
 - \$200,000 or more: 13.8%
- Gross Rent (occupied units paying rent)
 - Less than \$200: 1.3%
 - \$200 to \$299: 3.0%
 - \$300 to \$499: 26.5%
 - \$500 to \$749: 39.4%

- \$750 to \$999: 18.6%
- \$1,000 or more: 23.7%
- Gross Rent as a Percentage of Household Income
 - Less than 15 percent: 13.6%
 - 15.0 to 19.9 percent: 16.1%
 - 20.0 to 24.9 percent: 11.5%
 - 25.0 to 29.9 percent: 10.2%
 - 30.0 to 34.9 percent: 9.1%
 - 35.0 percent or more: 39.4%

Housing Discussion Related to Fair Housing Choice

Just under half (44%) of the housing in Wichita was built before 1959. Another 22% was built between 1960 and 1979. The fact that two-thirds of the housing in Wichita is at least 30 years old may suggest that it could be functionally obsolete for current times – and with a strong likelihood of having lead based paint. Fortunately, however, the rate of substandard units is very small and there does not appear to be an issue with overcrowding.

One significant statistic in Wichita’s housing environment is the large number of people (nearly 50%) who pay more than 30% of their income for rental housing. For persons with higher incomes, this amounts to a matter of choice and is not likely to create a financial hardship. However when lower income families pay more than 30% of their income for rent, the remaining household funds are often less than adequate for sustaining an acceptable quality of life without additional public assistance. It is this last group which clearly presents challenges for the community and points to the need to continue to develop and maintain safe, affordable housing.

Overview of 1996 Analyses and Updates

The City of Wichita last prepared an analysis of impediments to fair housing choice in 1996. The environment was much different at that time, most notably with a much smaller population – 304,011. The African American population made up 12% of the total, with Hispanics making up 5%. The 1996 analysis reached its conclusions based on reviews of pertinent City documents and a limited survey of the public. Following is a list of impediments, objectives and recommendations identified in the 1996 Analysis of Impediments (1996 AI), and an update on the status of each. Later in this document, strategies will be presented to further enhance progress toward addressing these impediments.

Education/Communication

1. Lack of information/understanding about the City Civil Rights Programs.

Objective: Increase public awareness of the City's Civil Rights Office.

Update: The City no longer has a Civil Rights Office or a formal Civil Rights Program, however citizens are encouraged to contact the Urban League of Kansas and/or the Kansas Human Rights Commission.

2. Lack of information on housing programs within the City of Wichita.

Objective: Improve the availability of information on housing programs in the City.

1996 AI Recommendation: Develop a brochure that explains the housing programs available in the City of Wichita. **Update:** A brochure was developed and is widely distributed through the Housing and Community Services Department, City Hall, Neighborhood City Halls, and the Urban League of Kansas. Brochures are also available in both Spanish and Vietnamese.

1996 AI Recommendation: Centralize housing related functions within the City.

Update: Housing related functions are centralized in the Housing and Community Services Department.

3. Many fair housing issues develop due to tenant-landlord disputes.

Objective: Improve communication and education for tenants and landlords regarding fair housing issues.

1996 AI Recommendation: Educate citizens on rights and responsibilities as tenants and landlords. **Update:** For several years the City has contracted with the Urban League of Kansas to serve as a referral source for tenant-landlord questions and complaints. The Urban League reports that such disputes remain the most frequent complaint that they receive.

1996 AI Recommendation: Work with landlord associations to increase the number of responsible landlords. **Update:** The Housing and Community Services Department holds an annual landlord meeting during which presentations and/or information is available to educate landlords on the Kansas Landlord Tenant Act.

1996 AI Recommendation: Contact organizations that may assist with resolving problems between existing landlords/tenants, such as local mediation groups. **Update:** As noted earlier, the Urban League of Kansas has served as the first referral source for complaints that are received by the City of Wichita. In addition the Housing Choice Voucher program provides clients and landlords with fair housing information at the time of lease-up.

4. Need to improve communication with neighborhood organizations on fair housing issues.

Objective: Develop better communication with neighborhood organizations on fair housing issues.

1996 AI Recommendation: Distribute information to neighborhood organizations on issues involving fair housing. **Update:** The City does not have a vehicle for communicating this specific message to neighborhood organizations however it can be easily incorporated through regular communication channels with individual organizations as well as through the local umbrella for such organizations (Wichita Independent Neighborhoods).

5. Continued communication with realtors on fair housing issues.

Objective: Develop better communication tools and create an on-going dialog with realtors on fair housing issues.

1996 AI Recommendation: Distribute more information on fair housing and civil rights programs to realtors. **Update:** The Housing and Community Services Department works in partnership with local realtor organizations to highlight and provide fair housing information and promote fair housing practices, especially during Fair Housing Month.

6. Need for information/communication on purchasing homes and lending institution practices.

Objective: Encourage lending institutions to provide public with information on lending practices to improve public perception. Inform public on how to access general information on home purchasing.

1996 AI Recommendation: Provide information to financial institutions on perception and offer assistance in distributing information to neighborhood organizations and non-profit associations demonstrating their activities throughout the city. **Update:** The Federal Financial Institutions Examination Council (FFIEC) provides information on lending practices in the city. The FFIEC also maintains a database of local lenders and

requires these lenders to report demographic information on the loans they underwrite. New data is available from the FFIEC annually and will be integrated into a City database as it becomes available. A link to the FFIEC will also be placed on the department's website to aid the public in accessing this information.

Resource Identification and Process Improvement

7. The majority of housing stock has physical barriers that limit availability opportunity for people with disabilities.

Objective: Increase the awareness of housing needs for people with disabilities.

1996 AI Recommendation: Examine resource options for rehabilitation of homes for people with disabilities. **Update:** The City makes federal funds available for home repair programs, which can and do address rehabilitation needs related to physical barriers for eligible homeowners.

8. Complaint process for fair housing can be time consuming.

Objective: Streamline complaint process to ensure most efficient method.

1996 AI Recommendation: Evaluate complaint process and determine if response time can be improved. **Update:** Current research has failed to identify any complaints regarding response time relative to the complaint process. This recommendation would appear to have been sufficiently addressed.

9. Waiting period for public assisted housing can be extremely lengthy.

Objective: Streamline public assistance process and increase selection to improve service delivery and to ensure availability of housing.

2006 AI Recommendation: Examine possibilities to increase the number of housing choices. **Update:** The public housing stock has increased from 573 in the early 1990's to 578 in 2010. The number of units is limited by the amount of funds provided by HUD.

1996 AI Recommendation: Examine possibility of privatizing current public housing.

Update: This recommendation has not been fully explored.

10. Reductions in Federal Funding for transportation.

Objective: Ensure the needs of transit dependent riders are met.

1996 AI Recommendation: Work to identify new funding opportunities, while still providing service throughout the community. **Update:** The City is an active partner in plans to develop an improved regional transit system. This work includes applying for planning and implementation grants to help achieve the goal of expanded public transit options.

11. Single female head of households may have increased difficulties in fair housing possibilities.

Objective: Examine the relationship between single female head of household and fair housing issues.

1996 AI Recommendation: Determine the need for special programs for single female head of household in regard to fair housing. **Update:** A review of fair housing-related complaints does not suggest a trend of discrimination against single female heads of households. However the City will continue to work with its partners to ensure that no such trend develops.

Partnership Development

12. Need for more partnerships to address fair housing issues.

Objective: Form partnerships with external players involved with fair housing.

Recommendation: Examine the possibility of developing an on-going Fair Housing Task Force. **Update:** The City prefers to incorporate fair housing issues into its general housing business models and not set it apart.

Recommendation: Create methods to exchange information with private sector institutions and non-profit organizations involved with fair housing. **Update:** The Housing and Community Services Department has strong partnerships with community advocates for fair housing choice, most notably the Urban League of Kansas and the Independent Living Resource Center. Updates on fair housing and other related housing issues are exchanged on a regular basis.

13. Lack of a central database of accessible housing for people with disabilities.

Objective: Encourage the development of a centralized resource for accessible housing for people with disabilities.

Recommendation: Contact realtors and non-profit organizations to develop a database of accessible properties for the disabled. Such a database would include owner-occupied and renter-occupied housing choices. **Update:** The Independent Living Resource Center (ILRC) provides information, resources and referrals related to accessible housing for people with disabilities.

In a related action, in 2005 the City of Wichita and Sedgwick County created an Access Advisory Board (AAB), to address issues of accessibility of City and County property (City Hall, Courthouse, parks, etc.), as well as other areas of concern identified by members of the Board.

CURRENT ANALYSIS OF IMPEDIMENTS and ACTION PLAN

The analysis of current impediments is based on the following sources of information:

- The demographic discussion presented in this document
- Prior impediments in the 1996 analysis
- 2006 general citizen survey results
- Housing studies and community plans
- Housing complaints filed with government or community agencies

Action Plan to Address Demographic Impediment Summary

Housing Choice – Neighborhood Diversity

A review of housing patterns according to race and ethnicity reflects concentrations as may be expected as a result of cultural and other natural choice factors. However as the charts in Appendix B reflect, there has been a significant deconcentration between 1990 and 2000. This suggests a relaxation in barriers that previously existed for minority populations regarding housing choice. No Action Plan is contemplated at this time.

Housing Choice – Income

The City of Wichita serves as the local Housing Authority and in that capacity is responsible for the operation of Public Housing and Section 8 Housing Choice Voucher (HCV) programs. The Public Housing inventory of 578 units represents an increase of 5 units (1% of the inventory) since 1990. In response to the needs of the community, half of this inventory is designated for persons who are disabled or over the age of 50.

The Section 8 Housing Choice Voucher program has seen a significant increase (nearly 50%) in voucher allocations from 1,349 in 1992 to 2,600 in 2010. Included in that amount are vouchers specifically for persons with disabilities. Such persons receive rental vouchers from the HCV program and supportive services from partner agencies through the Shelter Plus Care program. This provides an appropriate housing option for such persons and addresses a community need.

Housing Choice – Employment

Residents who are under employed and not employed at all, have extremely limited housing choices. The following is taken from the 2009-2013 Wichita Consolidated Plan.

According to the HUD Metro Fair Market Area (HMFA) for Wichita, the 2010 Fair Market Rent (FMR) that includes utilities for a two-bedroom apartment is \$640. In order to afford this level of rent and utilities without paying more than 30% of income on housing, a household would have to earn \$2,133 per month or \$25,596 annually. Assuming a 40-hour work week in 52 weeks, this level of income translates into an hourly housing wage of \$12.31. This is 40% more income earned by a person working for the 2010 minimum wage of \$7.25.

Limited access to jobs via public transportation also contributes to the challenge preventing some persons from having complete housing choice. The Wichita employment sector is dominated by the aircraft industry. The current public bus system serves three of the four

largest aviation companies, but only for the first shift. Thus persons working second and third shift at all companies and first shift workers at the fourth company do not have access to public transportation to and from their homes.

Action: *The City will continue to promote its Community Action programs which are designed to provide job training, counseling and placement for persons who are unemployed or under-employed, to address the housing limitations associated with low employment rates. In addition the City will participate in the local review of the region's transportation needs to ensure that strategies are included which will impact this population.*

Housing Choice – Housing Conditions

The condition of the city's housing stock is not cause for major alarm however its units do continue to age. That aging process combined with the fact that much of the affordable housing stock exists in older neighborhoods where residents are most likely to be of low to moderate incomes, reinforces the need for continued/increased funding to make functional and health and safety related repairs. This becomes an issue of economics which is a companion issue to the overall cost of housing, especially for those who rent property in these areas.

Action: *The City will continue to dedicate resources for home repairs for persons who are low-income, and to encourage continued enforcement of building codes for multi-family housing to ensure a continued supply of safe housing is available for all incomes.*

Action Plan to Address Prior Impediments

The following summarizes steps the City of Wichita will take to enhance strategies which were put in place following development of the 1996 Analysis of Impediments.

Education and Communication

There is much anecdotal evidence to suggest that there continues to be a need for information regarding the protections afforded by federal fair housing laws, and that some violations may not be reported due to a lack of education. That same evidence offers several theories on this phenomenon, primarily as it affects renters. Many renters feel as though they have few options and are forced by economic factors to accept affordable housing that may be in poor condition – just because the rents are low. Further, they are reluctant to report poor conditions for fear of retaliation by their landlords. And finally, discriminatory encounters are rarely viewed as such, again pointing to the need for increased education.

Action: *Run fair housing informational spots on the City's public access TV station which has a large viewership.*

Action: *Provide the Wichita Independent Neighborhood Association with fair housing information and ask that they include it in their written newsletters, and in their annual training workshop for neighborhood leaders.*

Action: *Provide a link on the City website to the FFIEC for lending information updates.*

Tenant/Landlord Disputes

Many tenant/landlord disputes may be resolved by education of tenants and landlords. To that end the City will continue current practices including annual meetings with landlords, to reinforce the importance of fair housing compliance. However additional action steps will be explored.

Action: *Encourage landlords to provide tenants with fair housing information in their native language. If not in all rental properties, at a minimum this should occur in properties that are federally subsidized through tax credits, public housing, housing choice vouchers, etc. It should be noted that making this information readily available may result in fewer complaints due to landlord compliance.*

Realtors and Lenders

In many ways the City views these industries as self-policing. Given the national standards which govern professional realtors and federal regulations which govern banking institutions, providing information to these industries is not an issue. However the public does need to know what the standards and regulations require.

Action: *The City will prepare informational public service announcements with participation by industry representatives as appropriate. These announcements will be scheduled for broadcast on the City's public access channel. In addition, other broadcast media will be invited to air the informational pieces that the City prepares.*

Housing for Persons with Disabilities

The City of Wichita supports the need for housing to address the needs of persons with disabilities, in several ways. The Wichita Housing Authority offers 57 units of housing that will accommodate persons with disabilities. Those units generally remained leased up. In addition, the City works closely with the Independent Living Resource Center which maintains a list of housing resources in the community that address the needs of persons with disabilities. And the City funds a home repair program which can make improvements to accommodate the needs of persons with physical disabilities.

From a policy perspective, the City provides Resolutions of Support for developers seeking tax credits to finance the development of affordable housing. The City's policy regarding tax credit resolutions requires a set aside of 20% of units for market rate rents. However applications which propose to serve special populations, such as persons with disabilities, may receive City support without the market rate requirement. Since July, 2008, the City has granted exceptions to market rate rent requirement for 40 units which are proposed to serve persons with disabilities. This represents 6% of the total number of units receiving City resolutions of support during the same time period.

The City of Wichita also issues tax-exempt revenue bonds in support of affordable housing projects, which carry income requirements for tenants. Over the past 15 years, eight residential projects received such support. Additionally the City issue qualified 501(c)(3) revenue bonds which finance senior projects. In the same time period, eight projects benefited from that support.

Action: *The City will continue the above actions and additionally will explore the use of universal design in the development of private market housing.*

Funding for Affordable Housing and Related Services

Most of the funding available in the community to provide affordable housing for any populations is federal, although state-issued federal tax credits are another source. Local revenues are not directly involved in housing finance although there are tax rebate incentives available for persons who invest in housing in the core of the city. The rebate policy has been used extensively by nonprofit developers of single family homes which are purchased by low to moderate income buyers. The tax rebate not only provides an incentive to purchase and/or improve housing in the core of the city, but it also makes such housing affordable in the long run, especially for those for whom this is their first experience with homeownership.

Funding also determines the availability of Public Housing and Section 8 Housing Choice Vouchers. In the previous AI, the long waiting lists for these programs were identified as an impediment to fair housing choice. To the extent that this is viewed as an impediment, it will continue to exist because of the gap between the growing number of persons in need of subsidized housing, and the fairly static amount of such housing. As noted in earlier portions of this document, this is as much an economic/employment issue as one of housing alone.

Action: *The Wichita/Sedgwick County Community Action Program was transferred to the Housing and Community Services Department in April, 2010. This provides an opportunity for the City to better coordinate job placement and employment enhancement services with access to affordable housing. This opportunity will be monitored for short and long term effectiveness.*

Transit Dependent Housing Choice Impediments

The impact of transit on housing choice has been demonstrated in many communities. In Wichita, the link is not only to housing choice but also to employment – which impacts housing choice.

Action: *The City's leadership on the Wichita Area Metropolitan Planning Organization (WAMPO) will lead to identification of strategies to pursue to close the community's local and regional transportation gaps, through implementation of the Metropolitan Transportation Plan 2035.*

2006 City of Wichita Citizen Survey Summary and Action Steps

The City of Wichita conducted a citizen survey in 2006, to determine local views on a variety of topics. Several questions were indirectly related to issues associated with fair housing choice. For instance, Wichita residents were asked to rate the community's openness and acceptance of people of diverse backgrounds. On a scale of 100 (with 100 being the best), respondents rated this factor at 44. This suggests that work needs to be done to improve understanding and relationships between people of different backgrounds.

The citizen rating of access to affordable quality housing was 50 on a scale of 100. Specific housing needs were not identified in this survey however indicators in the 2006 United Way Community Needs Assessment clearly point to subpopulations who have affordable housing needs, many of whom are among the FHEO's protected classes. (See housing study discussion below).

On the same 100 point scale, citizens gave public transit services low ratings regarding ease of bus travel (32) and in terms of quality (36). This is also mentioned as a concern in the United Way Community Needs Assessment. The consistency with which these issues are expressed by citizens, serves to validate the need to explore strategies to address the role and impact of public transit in the employment and housing choices that Wichita residents make.

Action: *The City of Wichita Citizen Survey is being repeated in 2010 and questions have been added which are specifically related to fair housing issues. (See Appendix C) Once the results have been tallied, appropriate steps will be taken to address citizen concerns which emerge from this data.*

Housing Studies/Community Plans and Action Steps

The primary source document for housing plans is the Consolidated Plan. The current plan covers the period 2009-2013 and identifies a number of strategies to address the availability and location of affordable housing. Priority needs were identified through citizen surveys and housing was the top priority. From that general priority designation, single and multi family rent and mortgage subsidies were among the sub-activities associated with housing as a priority.

Another very valuable planning document is developed by the United Way of the Plains. The United Way periodically conducts a community needs assessment – the 2010 assessment is underway. The last published community needs assessment (2006) identifies affordable housing as having the second largest percentage of responses to the question of the three most important community, health and human service needs. The respondents narrowed the focus to housing needs for children, seniors, disabled, homeless, and victims of domestic abuse. While this assessment does not point to fair housing issues in the most traditional sense, it does provide additional support for the need to address affordable housing for special populations including some in the protected classes.

Housing Complaints Filed with Government or Community Agencies and Action Steps

The Kansas Human Rights Commission is one of the resources available to local residents in Wichita, for filing housing discrimination complaints. No housing complaints were filed with that Commission from Wichita in fiscal year 09 and one was filed in fiscal year 08.

Kansas Legal Services data was also reviewed to determine the extent of housing cases filed with that agency. Their 2009 annual report reflects that housing cases made up only 5% of their total caseload. Following is a chart taken from that 2009 annual report.

	2009	2008	2007	2006	2005	2004	2003
Advice & Brief Service	837	721	900	1,161	1,262	1,495	1,452
Representation	169	160	44	47	49	73	50
Other Service	365	149	78	94	140	274	264
Mediation	3	6	6	12	15	4	8
Total	1,374	1,036	1,028	1,314	1,466	1,846	1,774

This chart reflects an overall decrease in the total number of housing cases over the report periods, although there have been fluctuations.

Complaints filed through the U.S. Department of Housing and Urban Development (HUD) Office of Fair Housing and Equal Opportunity is another source for information on housing discrimination in this community. Their records reflect that for the period January 1, 2006 through October 23, 2009, 58 housing discrimination complaints were filed from Sedgwick County. While the numbers are not staggering, of significance for planning purposes, are the complaint categories. In this three and one-half year period, the largest complaint category (37%) is related to disabilities. The next largest complaint category (21%) was for race discrimination— African American or Black.

The number of disability-related complaints in the HUD data, coupled with concern expressed in local community feedback regarding the housing needs of this population, suggests a need to develop strategies to focus on such housing needs.

The Urban League of Kansas is a HUD-approved Housing Counseling Agency and provides another option for residents of Wichita. In 2009, the Urban League reported receipt of over 800 rental housing-related inquiries. Most were from people seeking information regarding their rights in landlord/tenant disputes, many of which have reached the point of eviction. A significant number of requests were for information on the Kansas Landlord Tenant Act.

Action: *The City will seek opportunities to distribute landlord tenant act information using the City's public access channel and neighborhood association newsletters. Additionally, all City-funded rental agencies and/or properties will be required to provide tenants with information on tenant rights.*

Action: *The Housing and Community Services Department will convene annual meetings with agencies which are involved in housing related services for the disabled population, to share information and resources.*

CONCLUSIONS

Evidence presented in this analysis supports the local belief that while not perfect, the Wichita community does not face insurmountable impediments to fair housing choice. The community dynamics and demographics have made for a gradual integration of persons in protected classes, into the community's housing options. As demonstrated in this document, the success Wichita has experienced is the result of intentional efforts on the part of the City of Wichita and its community partners, to create an open living environment.

It is with that same sense of intentionality that the City will continue to take the action steps described herein and summarized in Appendix A, and to monitor reports which are generated by our partners at the local, state and federal levels.

It should be noted that while the City will take the lead in many of these areas, it is clear that the importance of fair housing choice is not limited to City or other government-funded programs. Fair housing is the law for everyone. That message and theme will continue to permeate the City's approach to identification and elimination of impediments to fair housing choice.

Note: Staff of the City of Wichita Housing and Community Services Department prepared this document by researching available data and materials. As soon as the U.S. Department of Housing and Urban Development provides additional and updated guidance regarding preparation of the Analysis of Impediments to Fair Housing Choice, this report will be updated with opportunities for community input. However the City has determined that to engage the community in a process which could change within months could create confusion and perhaps reduce the level of involvement during a second outreach effort.

City of Wichita Action Steps

Housing Choice-Employment

Action: *The City will continue to promote its Community Action programs which are designed to provide job training, counseling and placement for persons who are unemployed or under-employed, to address the housing limitations associated with low employment rates.*

Housing Choice-Housing Conditions

Action: *The City will continue to dedicate resources for home repairs for persons who are low-income, and to encourage continued enforcement of building codes for multi-family housing to ensure a continued supply of safe housing is available for all incomes.*

Education and Communication

Action: *Run fair housing informational spots on the City's public access TV station which has a large viewership.*

Action: *Provide the Wichita Independent Neighborhood Association with fair housing information and ask that they include it in their written newsletters, and in their annual training workshop for neighborhood leaders.*

Action: *Provide a link on the City website to the FFIEC for lending information updates.*

Tenant/Landlord Disputes

Action: *Encourage landlords to provide tenants with fair housing information in their native language. If not in all rental properties, at a minimum this should occur in properties that are federally subsidized through tax credits, public housing, housing choice vouchers, etc. It should be noted that making this information readily available may result in fewer complaints due to landlord compliance.*

Realtors and Lenders

Action: *The City will prepare informational public service announcements with participation by industry representatives as appropriate. These announcements will be scheduled for broadcast on the City's public access channel. In addition, other broadcast media will be invited to air the informational pieces that the City prepares.*

Housing for Persons with Disabilities

Action: *The City will continue to waive market rate requirements in resolutions of support for tax credit projects which will house persons with disabilities, and additionally will explore the use of universal design in the development of private market housing.*

Action: *The Housing and Community Services Department will convene annual meetings with agencies which are involved in housing related services for persons with disabilities, to share information and resources.*

Funding for Affordable Housing and Related Services

Action: *The Wichita/Sedgwick County Community Action Program was transferred to the Housing and Community Services Department in April, 2010. This provides an opportunity for the City to better coordinate job placement and employment enhancement services with access to affordable housing. This opportunity will be monitored for short and long term effectiveness.*

Transit Dependent Housing Choices

Action: *The City's leadership on the Wichita Area Metropolitan Planning Organization (WAMPO) will lead to identification of strategies to pursue to close the community's local and regional transportation gaps, through implementation of the Metropolitan Transportation Plan 2035.*

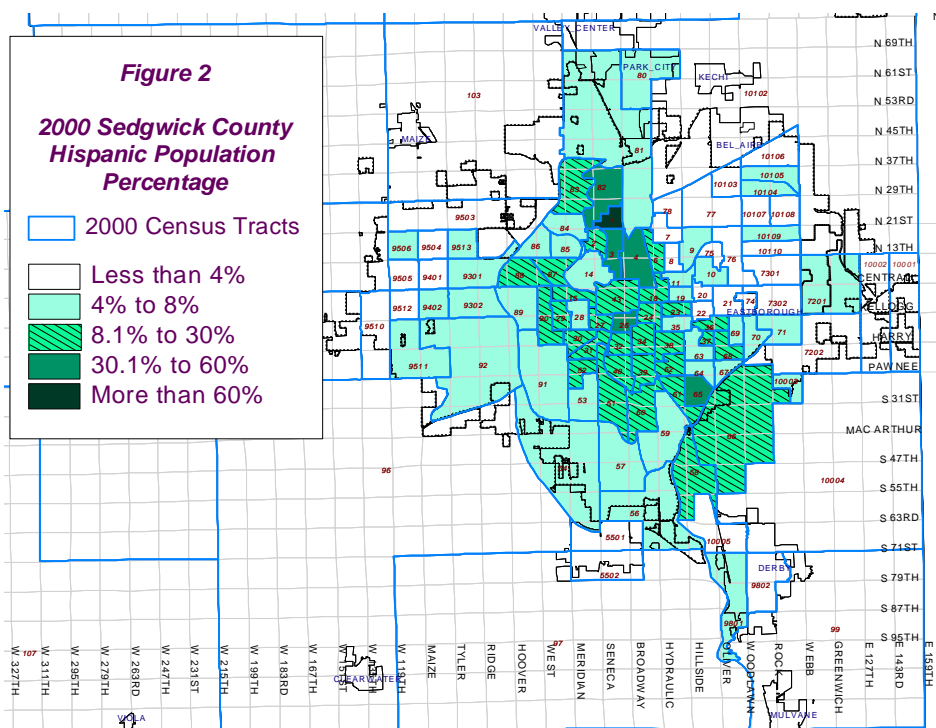
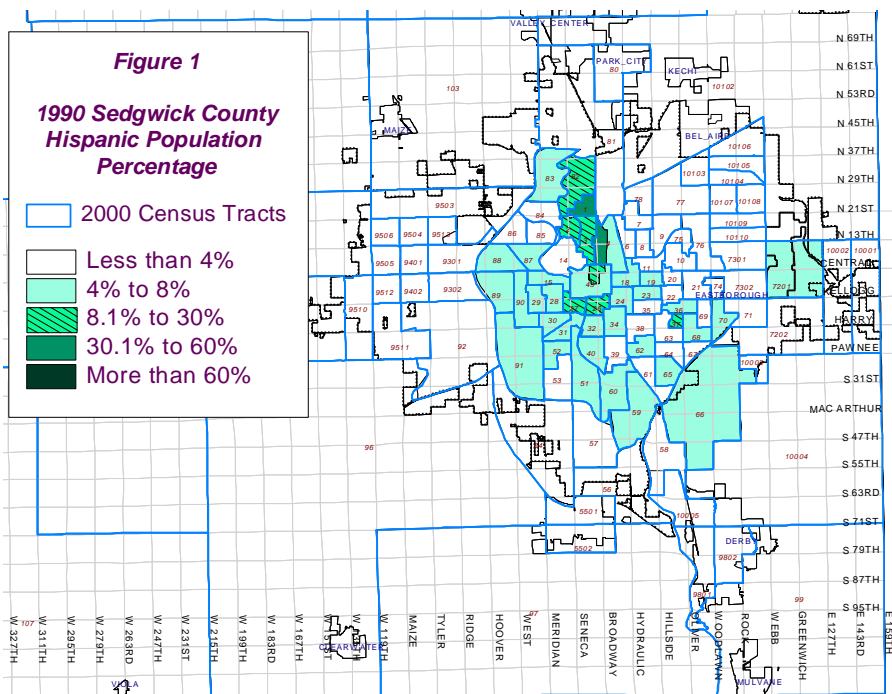
Citizen Surveys

Action: *The City of Wichita Citizen Survey was repeated in 2010 and questions have been added which are specifically related to fair housing issues. Once the results have been tallied, appropriate steps will be taken to address citizen concerns which emerge from this data.*

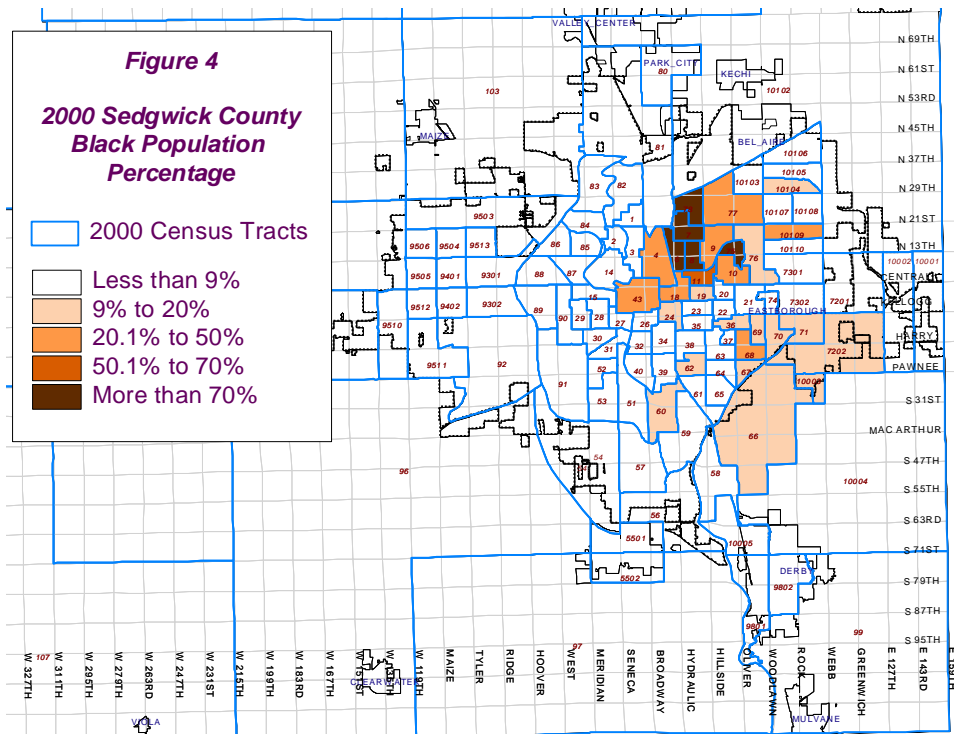
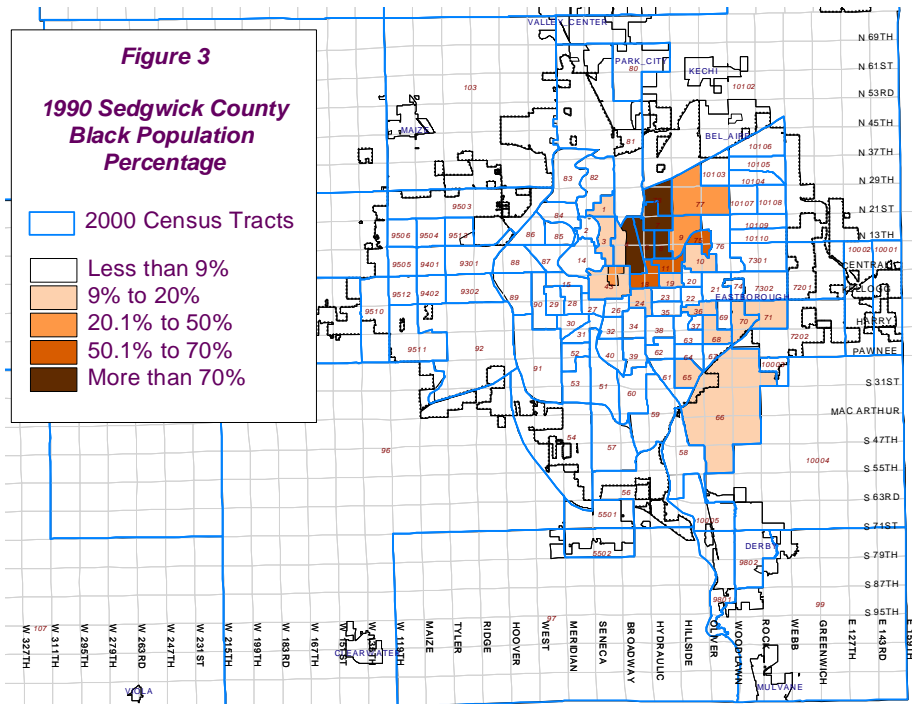
Housing Studies and Community Plans

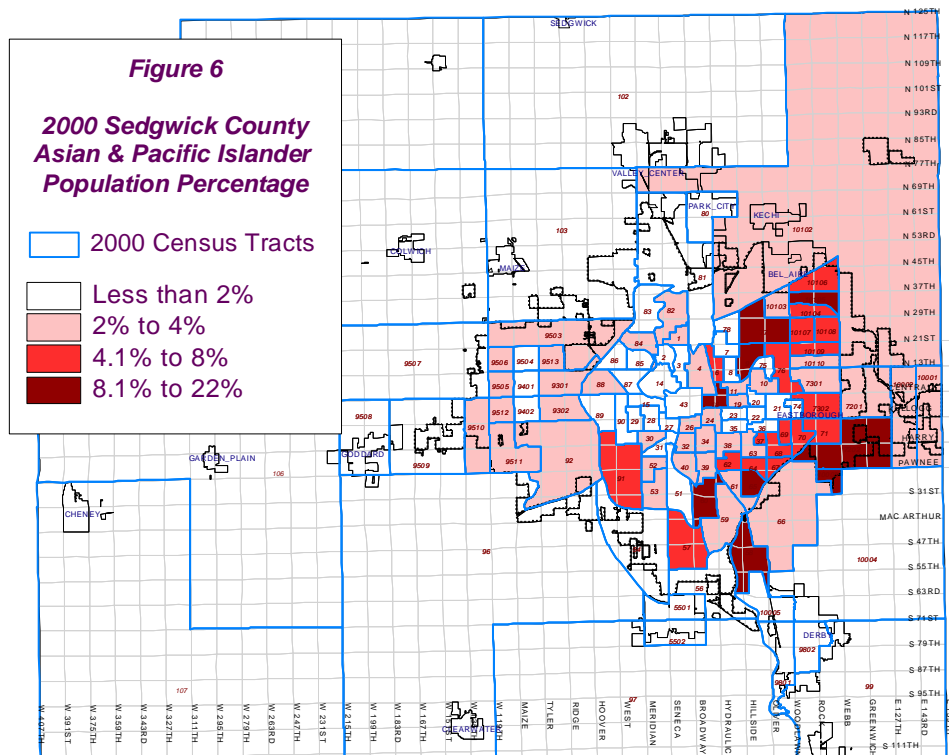
Action: *The City will seek opportunities to distribute landlord tenant act information using the City's public access channel and neighborhood association newsletters. Additionally, all City-funded rental programs and/or properties will be required to provide tenants with information on tenant rights.*

Housing Trends for Hispanic Population



Housing Trends for Black Population





2010 City of Wichita Citizen Survey

APPENDIX C

Question re Fair Housing Perception

To what degree, if at all, do the following barriers exist regarding housing choices in Wichita:

	Not a problem	Minor problem	Moderate problem	Major problem	Don't Know
	1	2	3	4	5
Cost of housing					
Distance to employment					
Location of public transportation					
Lack of accessibility for the disabled					
Language barriers					
Unfair lending practices					
Discrimination on the basis of gender					
Discrimination on the basis of age					
Discrimination on the basis of number of children					
Discrimination on the basis of race and ethnicity					
Discrimination on the basis of familial status					

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Pawnee and Broadway Intersection Improvement (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendations: Approve the project.

Background: The 2009-2018 Capital Improvement Program (CIP) adopted by the City Council includes a project to improve the intersection of Pawnee and Broadway. On March 3, 2010, the District III Advisory Board sponsored a neighborhood hearing on the project. The Board voted 9-0 to recommend approval of the project.

Analysis: The intersection will be reconstructed to replace the pavement and upgrade the traffic signals to include audible pedestrian signals and countdown pedestrian indications. Construction is planned to begin in 2011. Two-way traffic will be maintained throughout the project.

Financial Considerations: The CIP budget is \$2,125,000, with \$1,325,000 paid by the City and \$800,000 paid by Federal grants administered by the Kansas Department of Transportation. The funding source for the City share is General Obligation Bonds. The City Council previously approved \$125,000 for design and right of way.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow and safety at a major intersection.

Legal Considerations: The ordinance has been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the project, place the amending ordinance on first reading and authorize the necessary signatures.

Attachments: Map, CIP sheet and ordinance.

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

X

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works & Utilities	Eng & Dev	12/16/2010	Parsons and Broadway Intersection	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
MS-		2011		
9. Estimated Start Date (As Required)	10. Estimated Completion Date (As Required)	11. Project Revised		
12. Project Cost Estimate				12A.
ITEM	CO	KDOT	+	TOTAL
Right of Way				
Paving, grading & const.	\$1,125,000	\$800,000		\$2,125,000
Bridge & Dam				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Traffic Signals & Turn Lanes				
Totals	\$1,325,000	\$800,000		\$2,125,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation:				
Approve this project and place the remaining ordinance on 1st reading				
Division Head	Department Head		Budget Officer	City Manager
			Date	Date

ORDINANCE NO. 48-924

AN ORDINANCE AMENDING ORDINANCE NO. 48-693 OF THE CITY OF WICHITA, KANSAS DECLARING THE INTERSECTION OF PAWNEE AND BROADWAY (472-84881) TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. SECTION 2 of Ordinance 48-693 is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to the intersection of Pawnee and Broadway (472-84881) as a main trafficway in the following particulars:

The design, construction of a roadway, acquisition of right-of-way, relocation of utilities, installation of traffic signals, and landscaping, as necessary for a major traffic facility.”

SECTION 2. SECTION 3 of Ordinance No. 48-693 is hereby amended to read as follows:

“SECTION 3. The cost of the construction of the above described improvements is estimated to be Two Million One Hundred Twenty-Five Thousand Dollars (\$2,125,000) exclusive of the cost of interest on borrowed money. To the extent the cost of such improvements is not paid by Federal Grants administered by the Kansas Department of Transportation, the City of Wichita, Kansas, is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum amount of \$2,125,000, exclusive of the cost of interest on borrowed money.”

SECTION 3. The original SECTIONS 2 and 3 of Ordinance No. 48-693 are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of January, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law



City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Harry and Broadway Intersection Improvement (District I and III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: New Business

Recommendations: Approve the project.

Background: The 2009-2018 Capital Improvement Program (CIP) adopted by the City Council includes a project to improve the intersection of Harry and Broadway. On March 1, 2010, the District I Advisory Board sponsored a neighborhood hearing on the project. The Board voted 10-0 to recommend approval of the project. On March 3, 2010, the District III Advisory Board sponsored a neighborhood hearing on the project. The Board voted 9-0 to recommend approval of the project.

Analysis: The intersection will be reconstructed to replace the pavement, construct left turn lanes in all directions and upgrade the traffic signals. Construction is planned to begin in 2011. Two-way traffic will be maintained throughout the project.

Financial Considerations: The CIP budget is \$1,825,000, with \$825,000 paid by the City and \$1,000,000 paid by Federal grants administered by the Kansas Department of Transportation. The funding source for the City share is General Obligation Bonds. The City Council previously approved \$325,000 for design and right of way.

Goal Impact: This project addresses the Efficient Infrastructure goal by improving traffic flow and safety at a major intersection.

Legal Considerations: The ordinance has been approved as to form by the Law Department.

Recommendation/Actions: It is recommended that the City Council approve the project, place the amending ordinance on first reading and authorize the necessary signatures.

Attachments: Map, CIP sheet and ordinance.

**CAPITAL IMPROVEMENT
PROJECT AUTHORIZATION
CITY OF WICHITA**

USK

To Initiate Project

To Revise Project

X

1. Prepare in triplicate.
2. Send original & 2 copies to budget.
3. City Manager to sign all copies.
4. File original w/ initiating resolution in City Clerk.
5. Return 2nd copy to initiating department.
6. Send 3rd copy to Controller.

1. Initiating Department	2. Initiating Division	3. Date	4. Project Description & Location	
Public Works & Utilities	Eng. & Dev.	12/16/2010	Henry and Broadway Interchange	
5. CIP Project Number	6. Accounting Number	7. CIP Project Date (Year)	8. Approved by WCC Date	
MS-		2011		
9. Estimated Start Date A or B required	10. Estimated Completion Date A or B required	11. Project Revised		
12. Project Cost Estimate				
ITEM	CO	KDOT	*	TOTAL
Right of Way				
Paving, grading & curbs	\$175,000	\$1,000,000		\$1,175,000
Bridge & Dam				
Drainage				
Sanitary Sewer				
Sidewalk				
Water				
Traffic Signals & Turn Lanes				
Totals	\$825,000	\$1,000,000		\$1,825,000
Total CIP Amount Budgeted				
Total Prelim. Estimate				
13. Recommendation:				
Approve this project and place the amending ordinance on 1st reading				
Division Head	Department Head		Budget Officer	City Manager
			Date	Date

Published in the Wichita Eagle on January 14, 2011

ORDINANCE NO. 48-925

AN ORDINANCE AMENDING ORDINANCE NO. 48-692 OF THE CITY OF WICHITA, KANSAS DECLARING THE INTERSECTION OF HARRY AND BROADWAY (472-84880) TO BE A MAIN TRAFFICWAY WITHIN THE CITY OF WICHITA KANSAS; DECLARING THE NECESSITY OF AND AUTHORIZING CERTAIN IMPROVEMENTS TO SAID MAIN TRAFFICWAY; AND SETTING FORTH THE NATURE OF SAID IMPROVEMENTS, THE ESTIMATED COSTS THEREOF, AND THE MANNER OF PAYMENT OF THE SAME.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. SECTION 2 of Ordinance 48-692 is hereby amended to read as follows:

“SECTION 2. It is hereby deemed and declared to be necessary by the governing body of the City of Wichita, Kansas, to make improvements to the intersection of Harry and Broadway (472-84880) as a main trafficway in the following particulars:

The design, construction of a roadway, acquisition of right-of-way, relocation of utilities, installation of traffic signals, and landscaping, as necessary for a major traffic facility.”

SECTION 2. SECTION 3 of Ordinance No. 48-692 is hereby amended to read as follows:

“SECTION 3. The cost of the construction of the above described improvements is estimated to be One Million Eight Hundred Twenty-Five Thousand Dollars (\$1,825,000) exclusive of the cost of interest on borrowed money. To the extent the cost of such improvements is not paid by Federal Grants administered by the Kansas Department of Transportation, the City of Wichita, Kansas, is authorized to issue general obligation bonds to pay such costs under the authority of K.S.A. 12-689 up to a maximum amount of \$1,825,000, exclusive of the cost of interest on borrowed money.” SECTION 3. The original SECTIONS 2 and 3 of Ordinance No. 48-692 are hereby repealed.

SECTION 4. That the City Clerk shall make proper publication of this ordinance, which shall be published once in the official City paper and which shall be effective from and after said publication.

PASSED by the governing body of the City of Wichita, Kansas, this 11th day of January, 2011.

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

(SEAL)

APPROVED AS TO FORM:

Gary E. Rebenstorf
Director of Law



City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Repair or Removal of Dangerous & Unsafe Structures
(Districts I, III and IV)

INITIATED BY: Office of Central Inspection

AGENDA: New Business

Recommendations: Adopt the resolution.

Background: On November 23, 2010, a report was submitted with respect to the dangerous and unsafe conditions on the properties listed below. The Council adopted a resolution providing for a public hearing to be held on the condemnation actions at 9:30 a.m. or soon thereafter, on January 4, 2011.

Analysis: On November 1, 2010, the Board of Code Standards and Appeals (BCSA) held hearings on the properties listed below

<u>Property Address</u>	<u>Council District</u>
a. 1715 North Chautauqua	I
b. 2564 South Holyoke (fourplex)	III
c. 1313 West 55 th Street South (commercial building)	IV

Detailed information/analyses concerning these properties are included in the attachments.

Financial Considerations: Structures condemned as dangerous buildings are demolished with funds from the Office of Central Inspection Special Revenue Fund contractual services budget, as approved annually by the City Council. This budget is supplemented by an annual allocation of federal Community Development Block Grant funds for demolition of structures located within the designated Neighborhood Reinvestment Area. Expenditures for dangerous building condemnation and demolition activities are tracked to ensure that City Council Resolution No. R-95-560, which limits OCI expenditures for non-revenue producing condemnation and housing code enforcement activities to 20% of OCI's total annual budgeted Special Revenue Fund expenditures, is followed. Owners of condemned structures demolished by the City are billed for the contractual costs of demolition, plus an additional \$500 administrative fee. If the property owner fails to pay, these charges are recorded as a special property tax assessment against the property, which may be collected upon subsequent sale or transfer of the property.

Goal Impact: This agenda item impacts the goal indicator to Support a Dynamic Core Area and Vibrant Neighborhoods. Dangerous building condemnation actions, including demolitions, remove blighting and unsafe buildings that are detrimental to Wichita neighborhoods.

Legal Considerations: Pursuant to State Statute, the Resolutions were duly published twice on November 26, 2010 and December 3, 2010. A copy of each resolution was sent by certified mail or given personal service delivery to the owners and lien holders of record of the described property.

Recommendations/Actions: It is recommended that the City Council close the public hearing, adopt the resolutions declaring the buildings to be dangerous and unsafe structures, and accept the BCSA recommended actions to proceed with condemnation, allowing 10 days to start demolition and 10 days to complete removal of the structures. Any extensions of time granted to repair any structures would be

contingent on the following: (1) All taxes have been paid to date as of January 4, 2011; (2) the structures have been secured as of January 4, 2011, and will continue to be kept secured; and (3) the premises are mowed and free of debris as of January 4, 2011, and will be so maintained during renovation.

If any of the above conditions are not met, the Office of Central Inspection will proceed with demolition action and also instruct the City Clerk to have the resolutions published once in the official city paper and advise the owner of these findings.

Attachments: Memorandums to Council, case summaries, and resolutions.

DATE: December 16, 2010

CDM SUMMARY

COUNCIL DISTRICT # I

ADDRESS: 1715 N. CHAUTAUQUA

LEGAL DESCRIPTION: LOTS 59 AND 61, ON MT. OLIVE, NOW CHAUTAUQUA AVENUE, WOODRIDGE PLACE ADDITION, WICHITA, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 37 x 28 feet in size. Vacant for at least 2 years, this structure has a cracking concrete block foundation; missing vinyl siding; and the rear porch is deteriorated.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.

B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.

C. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

Superintendent of Central Inspection
Enforcing Officer

Date

DATE: December 16, 2010

BCSA GROUP # 4

ADDRESS: 1715 N. CHAUTAUQUA

ACTIVE FIELD FILE STARTED: January 23, 2008

NOTICE(S) ISSUED: Since January 23, 2008, a notice of improvement and several violation notices have been issued. On March 1, 2010, a Tall Grass and Weeds case was initiated on this property resulting in City of Wichita contractor abatement.

PRE-CONDEMNATION LETTER: August 4, 2009

TAX INFORMATION: The 2007, 2008 and 2009 taxes are delinquent in the amount of \$677.28, which includes interest.

COST ASSESSMENTS/DATES: None

PREMISE CONDITIONS: Minor debris and vinyl siding.

VACANT NEGLECTED BUILDING REPORT: Pending case

NUISANCE ABATEMENT REPORT: Weed cutting on June 23, 2010, in the amount of \$123.00, which is pending assessment.

POLICE REPORT: From May 5, 1991 through December 10, 2007, there have been twelve reported police incidents at this location including; (2) burglary residence, battery, weapons other, unlawful possession narcotics, disorderly conduct other, auto license violation, (3) other destruction of property, other miscellaneous offenses and larceny b all other.

FORMAL CONDEMNATION ACTION INITIATED: April 26, 2010

RECENT DEVELOPMENTS: No repairs have been made and the structure is secure.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the September 13, 2010, BCSA hearing Alvin Robinson, owner, was present as the representative for this property.

There has been an active case on this property since January 23, 2008. Several Notices of Improvement and Notices of Violation have been issued. A Tall Grass & Weeds case was initiated on March 1, 2010; this resulted in City abatement. A Pre-condemnation Letter was issued on August 4, 2009. The 2007, 2008, and 2009 taxes are delinquent in the amount of \$668.57. There are no Special Assessments against the property. The premise condition currently has bulky waste, debris, and tall grass and weeds. There is a pending Neglected Building case on this property. Formal condemnation action was commenced on April 26, 2010. Although no repairs have been made, the structure is secure.

Mr. Robinson told the Board that he had inherited the property from his deceased father. Upon first receiving title to the property, Mr. Robinson said he had received estimates for repairing the structure. Since the cost for repairs was prohibitive, Mr. Robinson decided to sell the property. After contracting with a buyer for the property, Mr. Robinson discovered that there was a lien on the property involving his personal financial circumstances. The lien was subsequently removed after Mr. Robinson's attorney verified that the lien had been placed against the property in error. While the issue with the lien was being resolved, the sale of the property fell through; the house was also broken into, and the plumbing and air conditioning unit was stolen. Unable to repair the structure due to financial constraints and personal health problems, Mr. Robinson acknowledged that the house had continued to deteriorate. He stated that he was still trying to find a buyer for the property.

Board Member Hartwell made a motion to allow until the regular November meeting from Mr. Robinson to repair, sell or demolish the structure, or the property will be referred to the City Council with a recommendation of condemnation, with ten days to being wrecking the building and ten days to complete the demolition. Board Member Youle seconded the motion.

Mr. Robinson asked if he would have to pay for razing the structure if the City Council condemned it. Ms. Legge explained that the costs associated with demolition would be billed to him as the property owner. If he was unable to pay the fees, they would be assessed against the property. Additionally, Ms. Legge mentioned that the overall cost would likely be more expensive if the City handled the demolition due to the requirement for an asbestos survey, and the hiring of an asbestos removal contractor if asbestos is present. In response to Mr. Robinson's inquiry about the possibility of locating potential buyers for properties such as his, Mr. Schroeder replied that there were entities that were interested in redevelopment of substandard housing. He told Mr. Robinson that he would try to provide some contact information of various organizations that might be interested in purchasing the property.

With no further discussion, Chairman Hentzen repeated the motion and requested a vote. The motion was approved.

At the November 1, 2010, BCSA hearing there was no one present as a representative for this property.

Ms. Legge informed the Board that an attorney for Mr. Alvin Robinson, the property owner, had notified Central Inspection by letter that Mr. Robinson no longer had interest in the property.

Board Member Harder made a motion to submit the property to the City Council with a recommendation of condemnation, with ten days to initiate demolition, and ten days to finish the removal of the structure. Board Member Crotts seconded the motion. The motion was approved.

STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

DATE: December 16, 2010

CDM SUMMARY

COUNCIL DISTRICT # III

ADDRESS: 2564 S. HOLYOKE (fourplex)

LEGAL DESCRIPTION: LOT 37, BLOCK G, PLANEVIEW SUBDIVISION NO. 1 BEING A SUBDIVISION IN SECTION 2, TOWNSHIP 28 SOUTH, RANGE 1 EAST OF THE 6TH PRINCIPAL MERIDIAN, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A one story frame dwelling about 113 x 34 feet in size. Vacant and open, this structure has missing vinyl siding; badly worn composition roof with holes; and the rear enclosed porch has collapsed.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

- A. Those, which have been damaged by fire, wind, want of repair, or other causes so as to have become dangerous to life, safety, morals or the general health and welfare of the occupants or the people of the city.**
- B. The structure fails to provide the necessities to decent living, which makes it, unfit for human habitation.**
- C. Those open to unauthorized persons or those permitted to be attractive to loiterers, vagrants, or children.**
- D. The building has parts, which are so attached that they may fall and injure other property or the public.**
- E. Those whose use, equipment or want of good housekeeping constitutes a decided fire or safety hazard to the property itself or its occupants or which presents a decided fire or safety hazards to surrounding property or a menace to the public safety and general welfare.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

Superintendent of Central Inspection
Enforcing Officer

Date

DATE: December 16, 2010

BCSA GROUP # 4

ADDRESS: 2564 S. HOLYOKE (fourplex)

ACTIVE FIELD FILE STARTED: June 15, 1977

NOTICE(S) ISSUED: This property was the subject of previous condemnation and Minimum Housing Code court actions in the 1990's. Exterior repairs were completed to remove the structure from condemnation consideration, and a Minimum Housing Code court case was closed in 1997. A Minimum Housing Code case was re-initiated on the property in February 2000. Since February 2000, several notice of improvements and numerous violation notices have been issued. In January 2009, a Neighborhood Nuisance Enforcement case was initiated on this property resulting in owner compliance. In March 2010, a Neighborhood Nuisance Enforcement case was started on this property and remains open. In addition, there is Residential Zoning case and Building Complaint case open on this property. Uniform Criminal Complaints have been issued regarding the property and it has been the subject of Neighborhood Court.

PRE-CONDEMNATION LETTER: April 13, 2010

TAX INFORMATION: The 2006, 2007, 2008 and 2009 taxes are delinquent in the amount of \$1,816.27, which include interest.

COST ASSESSMENTS/DATES: None

PREMISE CONDITIONS: Fencing, wooden pallets, bulky waste, construction debris and a trailer filled with salvage metal, which appear to belong to the owner of 2564 S. Holyoke, are stored on the vacant lot north of this property.

VACANT NEGLECTED BUILDING REPORT: Pending case

NUISANCE ABATEMENT REPORT: None

POLICE REPORT: From April 18, 1993 through March 1, 2002, there have been seven reported police incidents at this location including; burglary non residence, disorderly conduct other, (2) other miscellaneous offenses and (2) miscellaneous reports.

FORMAL CONDEMNATION ACTION INITIATED: April 26, 2010

RECENT DEVELOPMENTS: The expired building permit was reopened on November 15, 2010. Repairs are in progress, however some repairs do not meet code. Central Inspection Building staff opened a complaint case on December 10, 2010, due to repairs being made beyond the scope of the issued permit. On December 15, 2010, Building Supervisor, Darlene Hultman, met with the owner's father Mr. Fred Mitchell to discuss repairs.

HISTORIC PRESERVATION REPORT: No impact

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the September 13, 2010, BCSA hearing Fred

Mitchell and his son, Fred Deon Mitchell, were present as representatives for this property.

Since June 15, 1977, Central Inspection has had cases on this property. Numerous improvement and violation notices have been issued. In January of 2009, a Neighborhood Nuisance Enforcement case was started, resulting in owner compliance. In March of 2010 a new Neighborhood Nuisance Enforcement case was begun and remains open at this time. A Pre-condemnation Letter was issued on April 13, 2010. The 2006, 2007, 2008, and 2009 taxes are delinquent in the amount of \$1,589.30. There are no Special Assessments against the property. There is bulky waste, trailers, and tall grass and weeds on the premises. There is a pending Neglected Building case on the property. Although a permit was issued for repairs on the structure and roofing repairs were in progress, the area Neighborhood Inspector had questions about the materials being used. The concern was referred to the Building Section of Central Inspection for investigation. The Neighborhood Inspector could not ascertain whether the property was secure.

Mr. Mitchell (father) told the Board that most of the debris had been removed from the site and the building had been secured. He brought pictures of the site to show the Board. The wood, Mr. Mitchell (father) said, was building material that he had purchased from Boeing Surplus. Mr. Mitchell (father) said he needed more time to complete the repairs. Since he also had a job, he could only make progress on the structure as his time was available.

Chairman Hentzen asked what would be done with the materials in the pick-up bed. Mr. Mitchell (father) said he did "scrap metalling" for different construction companies as a means to make a living, and the materials in the pick-up bed were scrap metal materials. The larger trailer in front of the structure was full of debris and would be taken to the dump.

Board Member Harder made a motion to grant until the November meeting for the taxes to be paid, and for Mr. Mitchell (father) to return with a plan of action for the property, keeping the site secure and clean in the interim. Board Member Youle seconded the motion. The motion was approved.

At the November 1, 2010, BCSA hearing Fred L. Mitchell, father of the owner, was present.

At the September 13, 2010, hearing, this property was first presented to the Board. At that meeting, Fred L. Mitchell, father of the owner, and Fred Deon Mitchell, the owner, attended on behalf of the property. At that time, a motion was approved by the Board to allow until the regularly scheduled November hearing for the delinquent taxes to be paid and for a plan of action for the repair of the property to be established; the site was to be maintained in a clean and secure condition in the meantime.

The 2006, 2007, 2008, and 2009 taxes are delinquent in the amount of \$1,808.26, including interest. There are no Special Assessments against the property. All other violations remain, and there is a trailer filled with trash and bulky waste on the site. The building permit has expired. The north unit is not secure; it has an open window and the rear door is open. The owner of a neighboring property has complained that trash and debris from the four-plex has sometimes been dumped on his property.

Mr. Fred Mitchell told the Board that he had talked to staff at Sedgwick County and was prepared to make a payment on the delinquent taxes. He said that all of his income had gone into the property and was draining him financially. Mr. Mitchell informed the Board that he has redecked a portion of the roof and has repaired some of the windows; some of the rotted wood has also been replaced.

Board Member Willenberg made a motion to refer the property to the City Council with a recommendation of condemnation, with ten days to start wrecking the structure and ten days to finish the demolition. Board Member Harder seconded the motion. The motion carried. Ms. Legge explained the formal condemnation procedure to Mr. Mitchell, including the approximate time line before the property would be placed on the City Council Agenda.

STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

DATE: December 16, 2010

CDM SUMMARY

COUNCIL DISTRICT # IV

ADDRESS: 1313 W. 55TH S

LEGAL DESCRIPTION: THE EAST 10 ACRES OF THE WEST 30 ACRES OF THE NORTH HALF OF THE NORTHEAST QUARTER OF SECTION 30, TOWNSHIP 28 SOUTH, RANGE 1 EAST OF THE SIXTH PRINCIPAL MERIDIAN, SEDGWICK COUNTY, KANSAS

DESCRIPTION OF STRUCTURE: A two story frame commercial building about 30 x 60 feet in size. Vacant for at least 1 1/2 years, this structure has rotted and missing wood siding; sagging and badly worn composition roof, with holes; deteriorated front porch; dilapidated rear porch, with collapsing stairs and landing; and the wood trim and framing members are rotted.

Description of dangerous or unsafe condition(s): The property is found to be dangerous and unsafe because of the following conditions:

- A. The building has parts which are so attached that they may fall and injure other property or the public.**
- B. Those structurally unsafe and liable to fall or collapse or that having vertical structural members or supports that lean, list or buckle to an extent that safety is questionable.**
- C. Those, which have improperly distributed loads upon the floors or roofs or in, which the same are overloaded or which have insufficient strength to be reasonably safe for the purpose used.**
- D. Those, which have become or are so dilapidated, decayed, unsafe, unsanitary or which so utterly fail to provide the habitation, or are likely to cause sickness or disease, so as to work injury to the health, morals, safety or general welfare of those living therein.**
- E. Those having light, air, and sanitation facilities which are inadequate to protect the health, safety or general welfare of human beings who live or may live therein.**

City Ordinance states that any one of the above categories is just cause to declare the building a public nuisance and shall be repaired or demolished.

Superintendent of Central Inspection
Enforcing Officer

Date

DATE: December 16, 2010

BCSA GROUP # 3

ADDRESS: 1313 W. 55TH S

ACTIVE FIELD FILE STARTED: January 25, 2010

NOTICE(S) ISSUED: Since January 25, 2010, an advisory letter was issued. In July 2002, April 2004, April 2006 and July 2006, Environmental cases were initiated on this property resulting in City of Wichita contractor abatements. In February 2003 an Environmental case was initiated resulting in owner compliance. In July 2009, a Tall Grass and Weeds case was initiated resulting in City of Wichita contractor abatement. On January 20, 2010, an Environmental case was started and remains open. It should be noted that this property was previously in condemnation. Due to sufficient exterior repairs the case was closed and returned to regular building code enforcement on May 21, 2002.

PRE-CONDEMNATION LETTER: January 25, 2010

TAX INFORMATION: Current

COST ASSESSMENTS/DATES: There is a 2005 special assessment for lot cleanup in the amount of \$651.83, two 2006 special assessments for weed cutting in the amount of \$116.50 each, 2007 special assessment for weed cutting in the amount of \$116.50 and 2010 special assessment for weed cutting in the amount of \$132.54, all include interest.

PREMISE CONDITIONS: Tree debris

VACANT NEGLECTED BUILDING REPORT: Active case

NUISANCE ABATEMENT REPORT: Lot cleanup on August 12, 2004, in the amount of \$564.26, weed cutting on April 19, 2006, in the amount of \$111.64 and July 12, 2006 in the amount of \$111.64; all include interest. Weed cutting on August 13, 2009, in the amount of \$128.29.

POLICE REPORT: None

FORMAL CONDEMNATION ACTION INITIATED: March 29, 2010

RECENT DEVELOPMENTS: No repairs have been made and the rear door is unsecure.

On July 29, 2010, Central Inspection staff received correspondence from the Wichita Police Department regarding this property being unsecured. As of September 9, 2010, the collapsed staircase has been removed all other violations remain unmet and the structure is secured.

OWNER'S PAST CDM HISTORY: None

BOARD OF C.S.&A. RECOMMENDATION: At the June 7, 2010, BCSA hearing Kevin Massey attended the hearing.

An active case was begun on this property in January 2010. A previous condemnation case was initiated against this property, but repairs had progressed far enough that the case was removed

from the condemnation list. A Tall Grass and Weeds Case in 2009 was resolved by contractor abatement through the City of Wichita. There is an active Neglected Building Case on the property. A Pre-condemnation Letter was issued on January 25, 2010.

The 2009 taxes are delinquent in the amount of \$1,906.72, including interest; a 2010 Special Assessment for weed mowing was assessed against the property in the amount of \$132.54. No repairs have been made to the structure; the exterior stairway is collapsing and is dangerous; the structure is secure. There is bulky waste and trash on the premise due to illegal dumping.

Mr. Massey explained that he had received a call from his father, Norman Massey, asking that he attend the Board Meeting in his father's behalf since the elder Mr. Massey was unable to attend.

Mr. Van Zandt explained that the owners of the property had requested that the notice for tax purposes be sent to Mr. Norman Massey, who actually has no legal interest in the property and is not registered as a legal owner.

Board Member Coonrod made a motion that the Board allow Mr. Massey to reappear before the Board at the next regularly scheduled meeting with a clarification of the Masseys' interest in the property and/or a plan of action for the property, or the property will be referred to the City Council for condemnation, with ten days to start wrecking the structure and ten days to complete the removal. Board Member Harder seconded the motion. The motion was carried.

At the July 12, 2010, BCSA hearing Norman Massey, owner of the property, was present.

Presented to the Board at the June 5, 2010, hearing, the property was represented by Mr. Massey's son. At that time, the Board approved a motion to allow until the regularly scheduled July meeting for the owner or his representative to appear before the Board with a clarification of ownership and a plan of action for the property.

The Sedgwick County Real Estate Records show the property was owned by an individual (Mr. Julius), who sold the property to another party (Mr. Trotter), who then sold the property to Mr. Massey. Mr. Massey has not received clear title to the property because the proper documentation has not been received by the Sedgwick County Registrar of Deeds for the sale of the property from Mr. Julius to Mr. Trotter.

No repairs have been made to date. There are delinquent taxes in the amount of \$1,917.00; a Special Assessment for weed mowing in the amount of \$132.54 has been assessed against the property.

Mr. Massey said he had hired an individual to clean up the property; he had gone by the site the morning of the July hearing and discovered that the premise had not been cleaned. Mr. Massey explained that he had paid the delinquent taxes and Special Assessment. Asked by Board Member Harder what he planned to do with the property, Mr. Massey responded that he intended to clean up the property and put it up for sale. In reply to the amount of time needed for cleaning up the site, Mr. Massey said it would be completed by the end of the week. Board Member Crofts stressed to Mr. Massey the importance of getting the title work cleared.

Board Member Youle made a motion to allow until the September Board meeting for Mr. Massey to get the title cleared and determine a plan of action for the property, maintaining the site in a clean and secure condition in the meantime, and then reappear before the Board with an update. Board Member Hartwell seconded the motion. The motion carried.

At the September 13, 2010, BCSA hearing the property owner, Norman Massey, was present.

This property was first presented to the Board at the June 7, 2010, hearing, and again at the July 12, 2010, hearing. Mr. Norman Massey was present at the July hearing when the motion was approved by the Board to allow until the regular September meeting for Mr. Massey to get the issues with the title cleared, determine a plan of action for the building, and reappear before the Board with an update, maintaining the site in a clean and secure condition in the interim.

The taxes are current; there is a 2010 Special Assessment for weed cutting in the amount of \$132.54. The premise condition is maintained. On July 29, 2010, Central Inspection staff received correspondence from the Wichita Police Department that the property was unsecured. As of September 9, 2010, the collapsed staircase had been removed, the structure was secure, but no other violations had been corrected.

Mr. Massey explained that the issues with the title had been rectified, and that he had filed the proper paperwork with the Sedgwick County Real Estate office. He said he had cleaned up the property and placed it on the market for sale. In the meantime, Mr. Massey said he had also contacted an architect that was in the process of putting together some options for potential use of the structure.

Board Member Youle made a motion to allow until the regular November meeting for Mr. Massey to research his options for the structure, reappearing before the Board at that time to provide a definite course of action and an estimate of cost. In the event that Mr. Massey does not return to the November hearing with a viable plan for the building, the property will be submitted to the City Council with a recommendation of condemnation, with ten days to begin razing the structure, and ten days to finish the removal of the building. Board Member Harder seconded the motion. The motion passed without opposition.

At the November 1, 2010, BCSA hearing the owner of the property, Norman Massey, was present.

This case was before the Board in June 2010 for the first time, and again in July and September of 2010. At the September hearing, Mr. Massey was instructed by the Board to explore the options available to him for the building, and report back with a definite course of action at the November regular monthly meeting.

The taxes are current; there are no Special Assessments against the property. At the last site inspection done on October 26, 2010, some tree debris was noted, and the rear door of the building was open. No repairs had been done.

Presenting his plan for the property, Mr. Massey said he had put the property up for sale and had a contract that is supposed to close on November 12, 2010. If, for some reason, the sale does not go through, Mr. Massey told the Board that he would demolish the structure.

Board Member Harder made a motion to refer the property to the City Council with a recommendation of condemnation should the property not be sold or demolished as stated. Board Member Coonrod seconded the motion. The motion carried.

STAFF RECOMMENDATION/REMARKS: Adopt the recommendation of the Board of Code Standards and Appeals. However, any extensions to repairs would be providing that all provisions of City Council Policy 33 are complied with. If any of these conditions are not met, staff is directed to proceed to let for bids to demolish the structure.

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

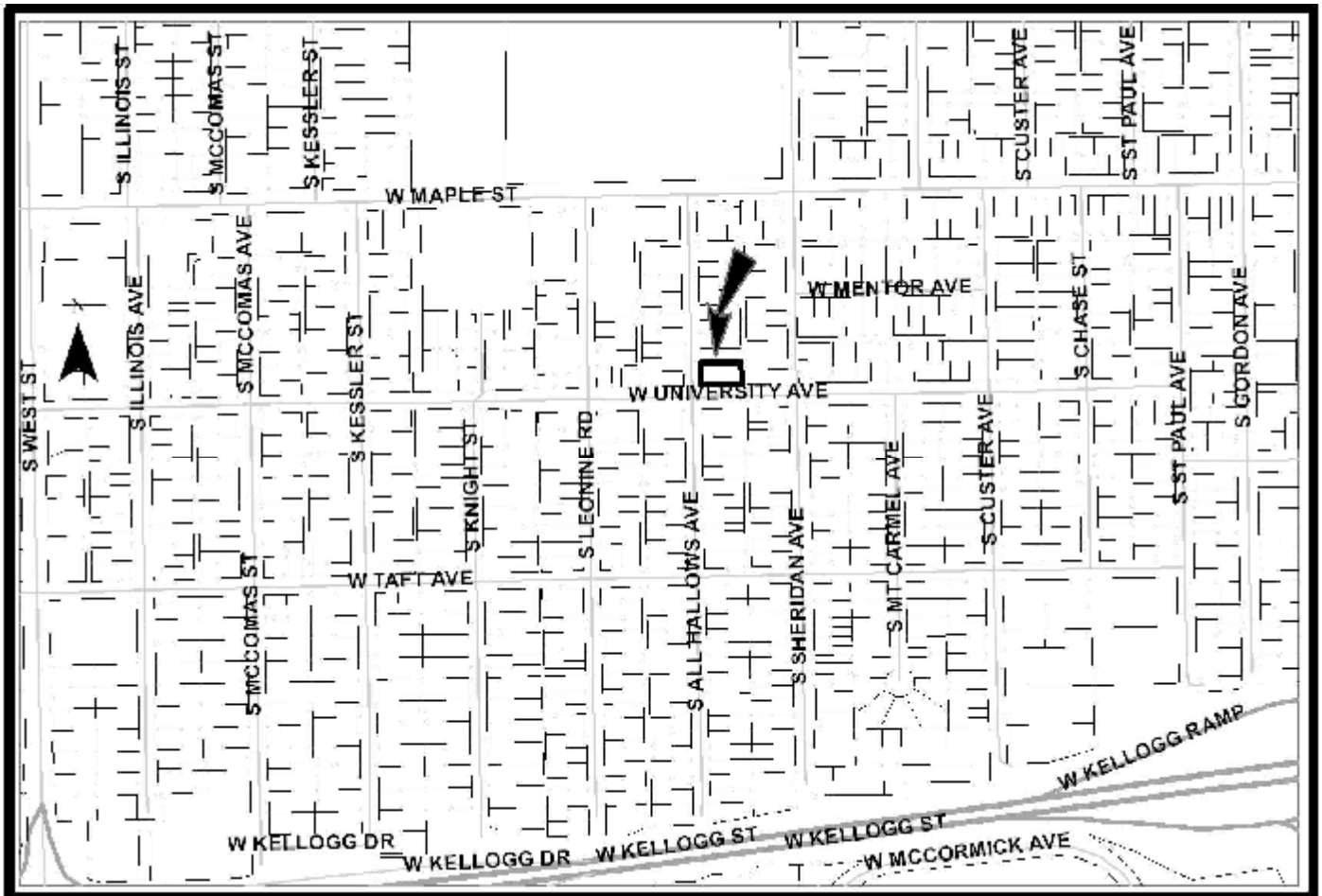
SUBJECT: ZON2010-00041 – Zone change from SF-5 Single-Family Residential (“SF-5”) to TF-3 Two-Family Residential (“TF-3”), generally located on the northeast corner of University Avenue and All Hallows Avenue. (District IV)

INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Non-Consent)

MAPC Recommendation: Approve, vote (14-0)

MAPD Staff Recommendation: Approve



Background: The applicant is seeking TF-3 Two-family Residential (“TF-3”) zoning for a 0.30-acre platted vacant lot, currently zoned SF-5 Single-family Residential (“SF-5”), located on the northeast corner of University Avenue and All Hallows Avenue. The applicant proposes to develop the site with a duplex. The *Unified Zoning Code* (UZC) defines a duplex as a lot used for “...two principal dwelling units within a single building.” The code permits building heights up to 35 feet in the TF-3 district, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing single lot would allow only one duplex structure with two living units or one single-family structure (permitted by right as TF-3 residential uses); however, it is possible to replat or lot split the existing 0.30-acre (or 13,068 square feet) lot into two 6,534-square foot lots that could allow two duplex structures (3,000 square feet minimum lot area per dwelling unit for duplex). Even as currently zoned, the lot could be lot split into more than one single-family lot (3,500-square foot minimum lot area for single-family).

Property immediately surrounding the site to the north, south, east and west is zoned SF-5, and developed with single-family residences. A SF-5 zoned property to the northeast of the subject site is actually developed with a duplex, while property located approximately 200 feet to the west of the subject site is zoned TF-3, and is developed with duplexes. Also, there is a concentration of TF-3 zoning, developed with duplexes located approximately 450 feet to the east and northeast of the subject site.

Analysis: At the MAPC meeting held November 18, 2010, the MAPC voted (14-0) to recommend approval of the request for TF-3 zoning. The case was approved through a consent vote since no one was present to voice concerns on the request.

During the subsequent two-week protest period following the MAPC meeting, Staff received protests within the 200-foot protest area. The protests equal 38.83 percent of the total land area, which is more than the 20 percent, requiring a $\frac{3}{4}$ majority vote by the City Council to override neighborhood protest.

The case was originally scheduled to be heard by the Wichita City Council on December 21, 2010. At the meeting, there were only four (4) council members present. Since the case has a greater than twenty-percent protest, at least five (5) members would be needed to vote on the case. The council decided to defer the case to the January 4, 2011 meeting.

Financial Considerations: There are no financial considerations in regards to the zoning request.

Goal Impact: The proposed rezoning would Promote Economic Vitality.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC, approve the zone change, place the ordinance on first reading and authorize the Mayor to sign the ordinance (requires a three-fourths majority vote); or
2. Override the recommendation of the MAPC and deny the zone change (requires a two-thirds majority vote); or
3. Return the application to the MAPC for reconsideration.

Attachments:

- MAPC Minutes
- Protest Map
- Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

**BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.**

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00041

Zone change request from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3") on properties described as:

Lots 46, 48 and 50; Block 2; College Green Addition, Wichita, Sedgwick County, Kansas; generally located on the northeast corner of West University Avenue and All Hallows Avenue.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 201__.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

**EXCERPT OF THE NOVEMBER 18, 2010 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION**

Case No.: ZON2010-41 – Abraham Swisher (Owner), Gaylan Nett (Applicant) and Ruggles and Bohm, P.A., c/o Chris Bohm (Agent) request a City zone change from SF-5 Single-Family Residential to TF-3 Two-Family Residential on property described as;

Lots 46, 48 and 50, Block 2, College Green Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is seeking TF-3 Two-family Residential (“TF-3”) zoning for a 0.30-acre platted vacant lot, currently zoned SF-5 Single-family Residential (“SF-5”), located on the northeast corner of University Avenue and All Hallows Avenue. The applicant proposes to develop the site with a duplex. The *Unified Zoning Code* (UZY) defines a duplex as a lot used for “...two principal dwelling units within a single building.” The code permits building heights up to 35 feet in the TF-3 district, which is the same maximum height allowed in the SF-5 district. If the request were to be approved, the existing single lot would allow only one duplex structure with two living units or one single-family structure (permitted by right as TF-3 residential uses); however it is possible to replat or lot split the existing 0.30-acre (or 13,068 square feet) lot into two 6,534 square feet lots that could allow two duplex structures (3,000 square feet minimum lot area per dwelling unit for duplex). Even as currently zoned, the lot could be lot split into more than one single-family lot (3,500 square feet minimum lot area for single-family).

Property immediately surrounding the site to the north, south, east and west is zoned SF-5, and developed with single-family residences. A SF-5 zoned property to the northeast of the subject site is actually developed with a duplex, while property located approximately 200 feet to the west of the subject site is zoned TF-3, and is developed with duplexes. Also, there is a concentration of TF-3 zoning, developed with duplexes located approximately 450 feet to the east and northeast of the subject site.

CASE HISTORY: The property is platted as Lots 46, 48 and 50, College Green Addition, which was recorded March 7, 1887.

ADJACENT ZONING AND LAND USE:

NORTH:	SF-5	Single-family Residence
SOUTH:	SF-5	Single-family Residence
EAST:	SF-5	Single-family Residence
WEST:	SF-5	Single-family Residence

PUBLIC SERVICES: The subject property has frontage along All Hallows Avenue (west side of property), a two-lane, paved, local street without traffic counts. Along the south side of the property runs West University Avenue, a two-lane, paved, collector without traffic counts. Public water and sewer service are currently available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. Urban

Residential is a category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. The zoning, uses and character of the neighborhood: Property immediately surrounding the site to the north, south, east and west is zoned SF-5, and developed with single-family residences. A SF-5 zoned property to the northeast of the subject site is actually developed with a duplex, while property approximately 200 feet to the west of the subject site is zoned TF-3 and is developed with duplexes. Also, there is a concentration of TF-3 zoning, developed with duplexes, approximately 450 feet to the east and northeast of the subject site.
2. The suitability of the subject property for the uses to which it has been restricted: The site could be developed with a single-family residential use under the current zoning.
3. Extent to which removal of the restrictions will detrimentally affect nearby property: Approval of the request would double the density at which the site could be developed. The affect on nearby residents could be increased traffic. However, single-family residences typically generate more traffic per unit than two-family residences. The minimum standards of the UZC should mitigate any other potential negative effects on the surrounding residential neighbors.
4. Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the site as appropriate for “Urban Residential” use. Urban Residential is a category that encompasses areas that reflect the full diversity of residential development densities and types typically found in a large urban municipality. The range of housing types found includes single detached homes, semi-detached homes, zero lot line units, patio homes, duplexes, townhouses, apartments and multi-family units, condominiums, mobile home parks, and special residential accommodations for the elderly (assisted living, congregate care and nursing homes). Elementary and middle school facilities, churches, playgrounds, parks and other similar residential-serving uses may also be found in this category.
5. Impact of the proposed development on community facilities: Traffic on the existing residential street could increase as a result of the proposed development. The site currently has a curb cut for access to West University Avenue, a classified collector.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

HENTZEN moved, **HILLMAN** seconded the motion, and it carried (14-0).

Case ZON2010-00041
 Total Area 223,476 sq. ft.
 Application Area 10,798 sq. ft.
 Street R/W 79,572 sq. ft.
 Net Area 133,106 sq. ft.
 20% of Net Area 26,621 sq. ft.
 Net Protest Area 51,688 sq. ft.
 Total % Protesting 38.83%

CALCULATION AREA
 PROTEST WITHIN
 CALCULATION AREA
 PROTEST OUTSIDE
 CALCULATION AREA



S MT CARMEL AVE

S SHERIDAN AVE

S ALL HALLOWS AVE

N

S LEONINE RD

W UNIVERSITY AVE

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

**BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.**

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00041

Zone change request from SF-5 Single-family Residential ("SF-5") to TF-3 Two-family Residential ("TF-3") on properties described as:

Lots 46, 48 and 50; Block 2; College Green Addition, Wichita, Sedgwick County, Kansas; generally located on the northeast corner of West University Avenue and All Hallows Avenue.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 201__.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

**City of Wichita
City Council Meeting
January 4, 2011**

TO: Mayor and City Council

SUBJECT: No Protest Agreement for Future Paving Requirements for SUB2010-00061-
Lot Split of the Westwood Addition located south of Maple and west of
Hoover. (District V)

INITIATED BY: Metropolitan Area Planning Department

AGENDA ACTION: Planning (Consent)

Staff Recommendation: Approve the Agreement.

MAPC Recommendation: There is no MAPC recommendation associated with the Agreement.

Background: This No Protest Agreement for the paving of Carlton Drive and Meadowhaven was required for the approval of the Lot Split (SUB2010-00061) for Lot 1, Westwood Addition. The Lot Split will allow for the development of another residential lot.

Analysis: This Agreement assures the City of Wichita that the property will be included in the improvement district for the paving of Carlton Drive and Meadowhaven and that the owners have waived their right to protest said paving.

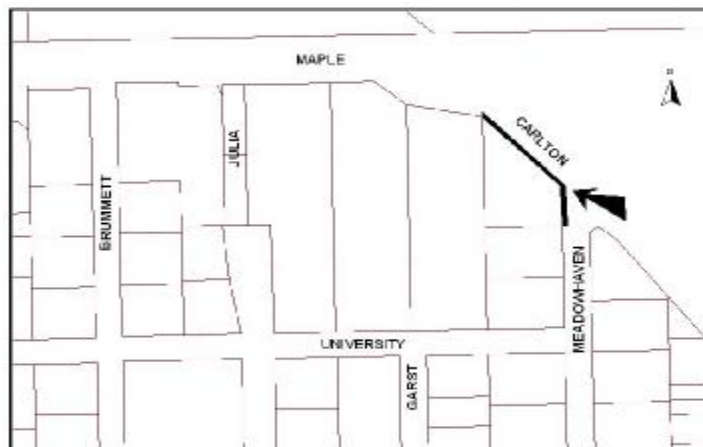
Financial Considerations: There are no financial considerations associated with the Agreement.

Goal Impact: Approval of the Agreement will Ensure Efficient Infrastructure through the integration of streets, utilities and other public facilities.

Legal Considerations: The No Protest Agreement for Future Paving Requirements has been approved as to form by the City's Law Department and will be recorded by the Register of Deeds.

Recommendations/Actions: It is recommended that the City Council approve the Agreement.

Attachments: No Protest Agreement for Future Paving Requirements



NO PROTEST AGREEMENT
FOR FUTURE PAVING REQUIREMENTS

THIS AGREEMENT made and entered into this 9th day of December 2010, by and between the City of Wichita, Kansas, party of the first part (hereinafter "City"), and Starkey, Inc., a Kansas not for profit corporation, party of the second part (hereinafter "Owner").

WITNESSETH:

WHEREAS, City, at some undetermined time in the future, intends to construct certain public improvements to serve property owned by Owner and property owned by others; and

WHEREAS, Owner is the owner of real property legally described as:

PARCEL 'A'

Lot 1, Westwood, Sedgwick County, Kansas, EXCEPT that part of said Lot 1 described as follows: Beginning at the southwest corner of said Lot 1; thence northerly along the west line of said Lot 1, 64.25 feet; thence easterly parallel with the south line of said Lot 1, 108.38 feet to a point 60.00 feet normally distant west of the east line of said Lot 1; thence easterly with a deflection angle to the left of 05°57'57" from the last described course, 60.33 feet to a point on the east line of said Lot 1; thence southerly along the east line of said Lot 1, 70.52 feet to the southeast corner of said Lot 1; thence westerly along the south line of said Lot 1, 168.38 feet to the point of beginning.

and,

PARCEL 'B'

That part of Lot 1, Westwood, Sedgwick County, Kansas described as follows: Beginning at the southwest corner of said Lot 1; thence northerly along the west line of said Lot 1, 64.25 feet; thence easterly parallel with the south line of said Lot 1, 108.38 feet to a point 60.00 feet normally distant west of the east line of said Lot 1; thence easterly with a deflection angle to the left of 05°57'57" from the last described course, 60.33 feet to a point on the east line of said Lot 1; thence southerly along the east line of said Lot 1, 70.52 feet to the southeast corner of said Lot 1; thence westerly along the south line of said Lot 1, 168.38 feet to the point of beginning.

and

WHEREAS, Owner wishes to complete the lot split requirements for Parcel "A" and Parcel "B" as required by the Wichita/Sedgwick County Planning Commission, and

WHEREAS, City wishes to insure that the said real property owned by Owner will be included in the improvement district responsible for that portion of the costs of said future improvement that are to be assessed pursuant to the provisions of K.S.A. 12-6a01 et seq.

NOW, THEREFORE, the parties hereto agree as follows:

1. City shall grant Owner's request for a lot split to said real property, notwithstanding the fact that not all the public improvements normally required to be constructed prior to approval of this lot split have been constructed.
2. Owner, on his/her own behalf and on behalf of his/her heirs, assigns and successors in interest, irrevocably waives his/her right, pursuant to K.S.A. 12-6a06, to protest the commencement of the construction of paving improvements on Carlton Drive and Meadowhaven by City, but nothing contained herein shall be deemed to be a waiver by Owner of his right to challenge, pursuant to K.S.A. 12-6a11, the reasonableness of the portion of the cost of said construction assessed against Owner's said real property.

A copy of this agreement shall be recorded with the Register of Deeds and the promises herein made by Owner shall constitute covenants running with the land described herein.

Starkey, Inc.

By: Carolyn Risley Hill
Carolyn Risley Hill, CEO

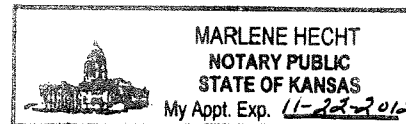
STATE OF KANSAS)
COUNTY OF SEDGWICK) SS:

BE IT REMEMBERED, that on this 9th day of December, 2010, before me, the undersigned, a Notary Public, in and for the County and State aforesaid, came Carolyn Risley Hill as CEO of Starkey, Inc., a Kansas not for profit corporation, who are personally known to me to be the same person(s) who executed the within instrument of writing and such person(s) duly acknowledged the execution of the same, for and on behalf and as the act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year above written.

Marlene Hecht
Notary Public

My Appointment Expires: November 22, 2012



Approved as to form:

Gary E. Rebenstorf, City Attorney

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: ZON2010-00042 – City zone change from TF-3 Two-family Residential (“TF-3”) to GC General Commercial (“GC”); generally located east of Grove Avenue, on the southwest corner of Green and 13th Streets North. (District I)

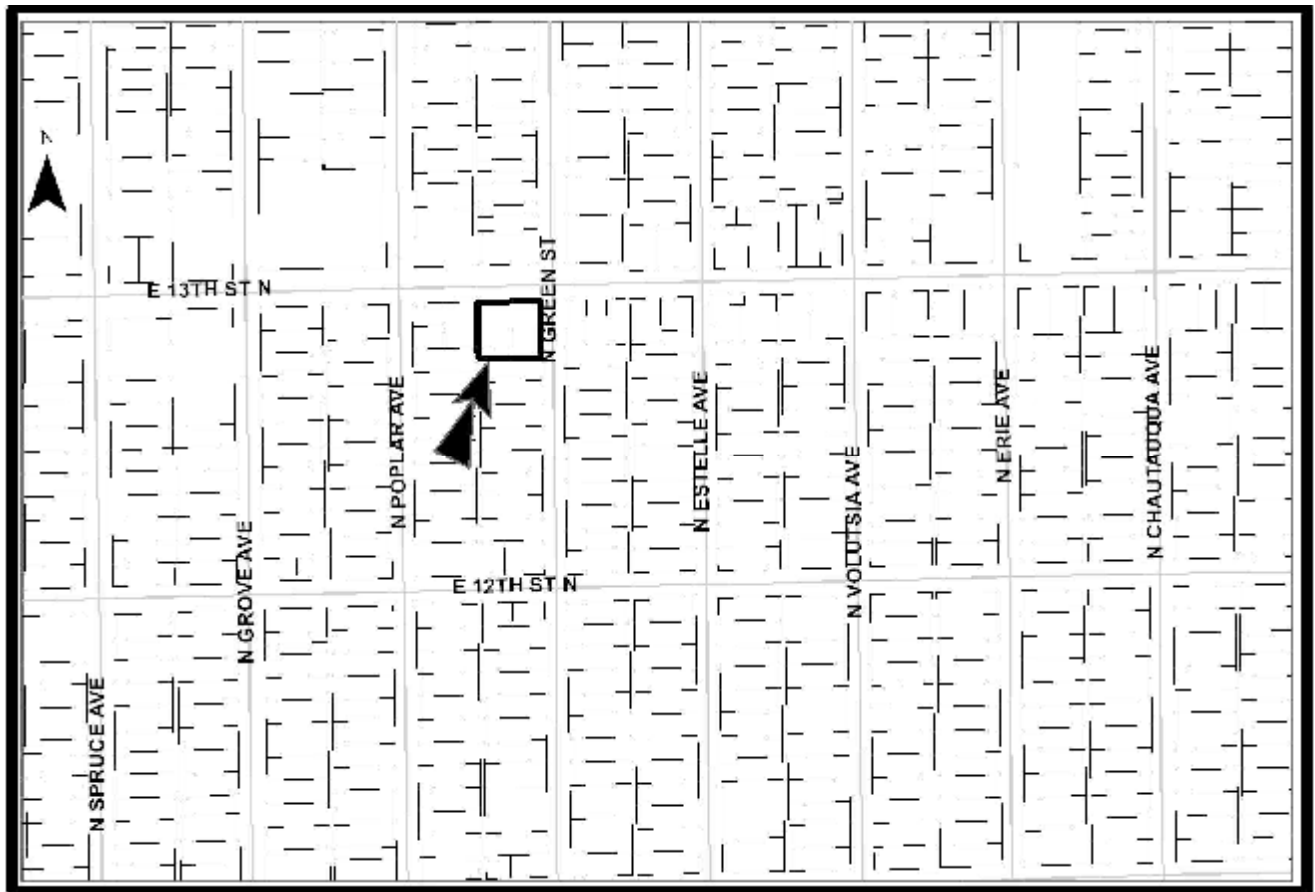
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

DAB I Recommendation: Approve.

MAPC Recommendation: Approve, vote (9-0).

MAPD Staff Recommendation: Approve.



Background: The applicant is requesting GC General Commercial (“GC”) zoning on a 0.38-acre site, currently zoned TF-3 Two-family Residential (“TF-3”). The proposed use is for an art studio and an open air retail market with outside display. The site is located at the southwest corner of East 13th Street North and North Green Street, just two blocks east of North Grove Avenue. The subject site currently is developed with two single-family residences, with one of those residences being vacant.

Any development on the subject property will be required to meet screening, compatibility standards and landscaping. For any proposed development, screening, buffer landscaping and compatibility standards will be required for the residential properties to the south and east. Any existing vegetation, on the subject property, that is left in place after the development of the site can be used to satisfy the buffer landscaping requirement. Access control would be reviewed, by the Traffic Engineer, according to the redevelopment of the site. The existing drives for the existing residences on the site could be closed, by access control, with continuous curb according to City Standards.

Property to the north of the subject site (across 13th Street) is zoned GC and is developed with a warehouse, with a service garage and paint shop abutting the west side of the warehouse. Property to the south of the subject site is zoned TF-3 and is developed with a duplex. To the west of the subject site the property is zoned LC and is currently vacant with a retail store directly west of the vacant parcel. Property to the east of the subject site (across Green Street) is zoned TF-3 and is developed with single-family residences.

Analysis: At the MAPC meeting held December 2, 2010, the MAPC voted (9-0) to recommend approval of the request for GC zoning. The case was a consent item for the MAPC, and no one from the public spoke for or against the application.

At the DAB I meeting held December 6, 2010, the DAB voted unanimously to recommend approval of the request for GC zoning, while also recommending that a Protective Overlay be placed on the zone change to prohibit undesirable uses. Staff drafted a Protective Overlay for the case and will incorporate the Overlay for final approval through the City Council. The applicant did not have a problem with incorporating the Protective Overlay. No one from the public spoke for or against the application.

No protests have been filed on this application.

The Protective Overlay that was recommended by DAB I contains the following:

- A. The following uses shall not be permitted: hotel or motel; pawn shop; payday loan; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; vehicle storage yard; adult entertainment establishment; massage therapist/parlor; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; kennel; night club; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment.

Financial Considerations: There are no financial considerations in regards to the zoning request.

Goal Impact: To promote economic vitality.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC, approve the zone change subject to the provisions of Protective Overlay #248, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required).

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Attachments:

- MAPC Minutes
- DAB Memo
- Ordinance

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00042

Zone change request from TF-3 Two-family Residential ("TF-3") to GC General Commercial ("GC") subject to Protective Overlay #248 on properties described as:

Lots 1, 3, 5, 7 and 9, Alice now Green Street, Fairmount Park Addition to Wichita, Sedgwick County, Kansas; generally located east of Grove Avenue on the southwest corner of Green and 13th Streets North.

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #248:

- A. The following uses shall not be permitted: hotel or motel; pawn shop; payday loan; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; vehicle storage yard; adult entertainment establishment; massage therapist/parlor; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; kennel; night club; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 201__.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

**EXCERPT OF THE DECEMBER 2, 2010 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: ZON2010-42 - Janice Thacker (Owner/Applicant) requests City zone change from TF-3 Two-Family Residential to GC General Commercial on property described as;

Lots 1, 3, 5, 7 and 9, Alice now Green Street, Fairmount Park Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicant is requesting GC General Commercial (“GC”) zoning on a 0.38-acre site, currently zoned TF-3 Two-family Residential (“TF-3”). The proposed use is for an art studio and an open air retail market with outside display. The site is located at the southwest corner of East 13th Street North and North Green Street, just two blocks east of North Grove Avenue. The subject site currently is developed with two single-family residences, with one of those residences being vacant.

Any development on the subject property will be required to meet screening, compatibility standards and landscaping. For any proposed development, screening, buffer landscaping and compatibility standards will be required for the residential properties to the south and east. Any existing vegetation, on the subject property, that is left in place after the development of the site can be used to satisfy the buffer landscaping requirement. Access control would be reviewed, by the Traffic Engineer, according to the redevelopment of the site. The existing drives for the existing residences on the site could be closed, by the access control, with continuous curb according to City Standards.

Property to the north of the subject site (across 13th Street) is zoned GC and is developed with a warehouse with a service garage and paint shop abutting the west side of the warehouse. Property to the south of the subject site is zoned TF-3 and is developed with a duplex. To the west of the subject site the property is zoned LC and is currently vacant with a retail store directly west of the vacant parcel. Property to the east of the subject site (across Green Street) is zoned TF-3 and is developed with a single-family residences.

CASE HISTORY: The property is platted as Lots 1, 3, 5, 7 and 9; Fairmount Park Addition, which was recorded August 12, 1909.

ADJACENT ZONING AND LAND USE:

NORTH:	GC	Warehouse-Office
SOUTH:	TF-3	Duplex
EAST:	TF-3	Single-family Residence
WEST:	LC	Retail

PUBLIC SERVICES: The subject property has frontage along East 13th Street North (north side of property), a four-lane, paved, arterial road with approximately 35,000 Average Daily Trips (ADT’s) near this location. Along the east side of the property runs North Green Street, a two-lane, paved, collector without traffic counts. Public water and sewer service are currently available to the subject property.

CONFORMANCE TO PLANS/POLICIES: The Land Use Guide of the Comprehensive Plan identifies this area as “Local Commercial.” “This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited

presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing.”

RECOMMENDATION: Based upon the information available prior to the public hearings, planning staff recommends that the request be APPROVED.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** Property to the north of the subject site (across 13th Street) is zoned GC and is developed with a warehouse with a service garage and paint shop abutting the west side of the warehouse. Property to the south of the subject site is zoned TF-3 and is developed with a duplex. To the west of the subject site the property is zoned LC and is currently vacant with a retail store directly west of the vacant parcel. Property to the east of the subject site (across Green Street) is zoned TF-3 and is developed with a single-family residences.
2. **The suitability of the subject property for the uses to which it has been restricted:** The site could be developed with a single-family residential or duplex use under the current zoning.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Rezoning and commercial development could have negative effects on the single-family residences north, east and west of the application area. Existing codes would require compatibility setbacks, screening, landscaping, limit noise, and prohibit certain uses within 200 feet of residences.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The Land Use Guide of the Comprehensive Plan identifies this area as “Local Commercial.” “This category encompasses areas that contain concentrations of predominately commercial, office and personal service uses that do not have a significant regional market draw. The range of recommended uses includes: medical or insurance offices, auto repair and service stations, grocery stores, florist shops, restaurants and personal service facilities. On a limited presence basis, these areas may also include mini-storage warehousing and small scale, light manufacturing.”
5. **Impact of the proposed development on community facilities:** Traffic on the existing residential street could increase as a result of the proposed development. The site currently has a curb cut for access to North Green Street, a classified local street.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

JANICE THACKER, 1537 N. YALE BOULEVARD said this is an ideal site for students and local artists to have an opportunity to show their work and develop business. She said art is not just extra, it is essential.

CHAIR MILLER STEVENS asked the applicant if they agreed with the comments and conditions of the Staff Report.

THACKER responded yes.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **HENTZEN** seconded the motion, and it carried (9-0).



INTEROFFICE MEMORANDUM

TO: Wichita City Council
MAPC Members

FROM: LaShonda Porter, Neighborhood Assistant District 1

SUBJECT: ZON2010-00042

DATE: December 22, 2010

On Monday, December 6, 2010, the District Advisory Board (DAB) for Council District 1 heard the zoning change request from Two-Family Residential to General Commercial at the property generally located east of Grove Avenue on the southwest corner of Green and 13th Street North.

There were no citizens in attendance to speak against the request.

Board members reviewed the case and had questions regarding future uses of that property at hand; however they supported the concept.

DAB members voted unanimously to recommend approval of this request. However the approval did add a protective overlay that prohibited certain uses on the property in the future.

Please review this information when this request is considered.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00042

Zone change request from TF-3 Two-family Residential ("TF-3") to GC General Commercial ("GC") subject to Protective Overlay #248 on properties described as:

Lots 1, 3, 5, 7 and 9, Alice now Green Street, Fairmount Park Addition to Wichita, Sedgwick County, Kansas; generally located east of Grove Avenue on the southwest corner of Green and 13th Streets North.

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #248:

- A. The following uses shall not be permitted: hotel or motel; pawn shop; payday loan; rodeo; riding academy or stable; tattooing or body piercing facility; vehicle and equipment sales; asphalt or concrete plant; vehicle storage yard; adult entertainment establishment; massage therapist/parlor; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; kennel; night club; restaurant with drive-in or drive-thru facilities; service station; tavern and drinking establishment.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 201__.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: ZON2010-00043 – City zone change from SF-5 Single-Family Residential to LC Limited Commercial, with a PO Protective Overlay, generally located east of Ridge Road, south of Maple Street. (District V)

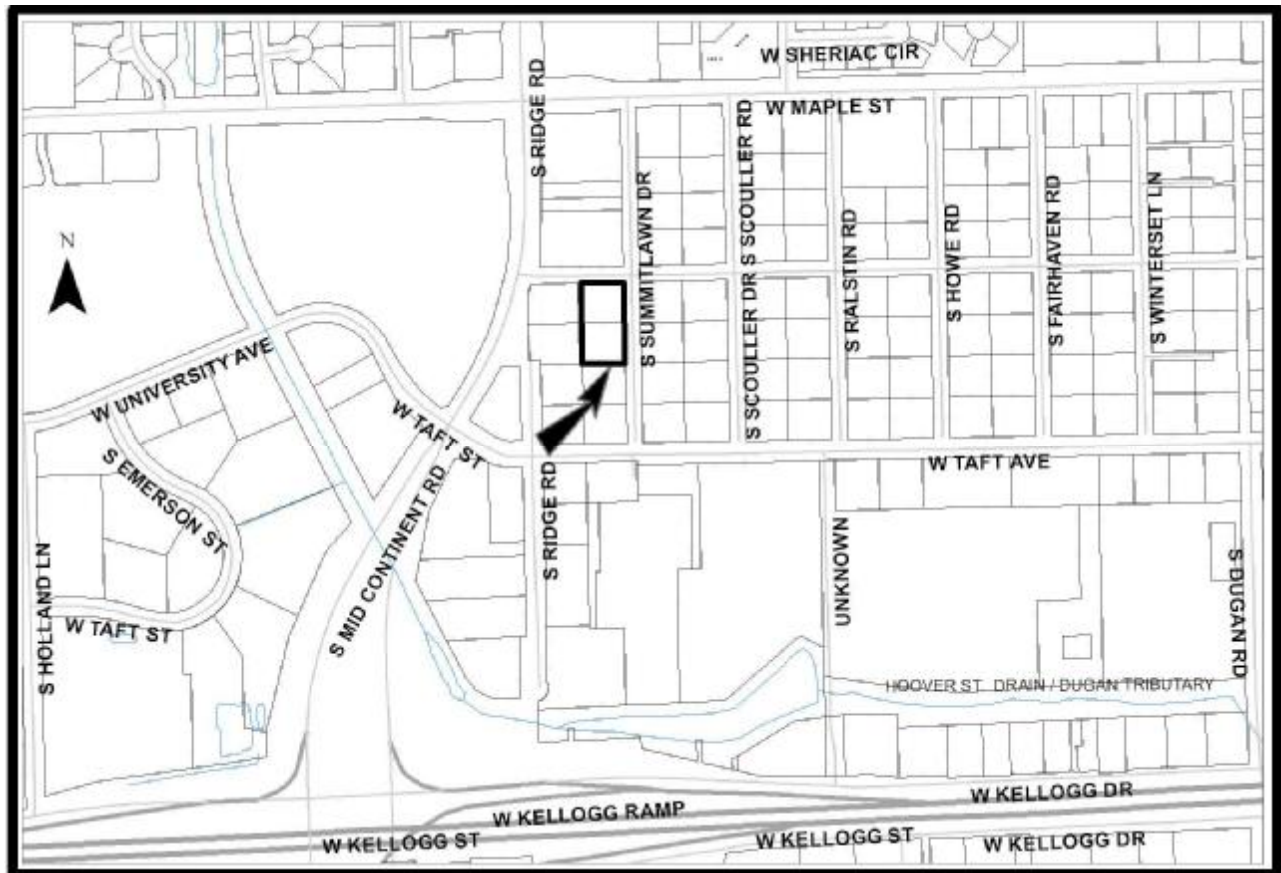
INITIATED BY: Metropolitan Area Planning Department

AGENDA: Planning (Consent)

DAB V Recommendation: Approve, vote (7-0).

MAPC Recommendation: Approve, vote (9-0).

MAPD Staff Recommendation: Approve.



Background: The applicants request a zone change from SF-5 Single-family Residential (“SF-5”) to LC Limited Commercial (“LC”) on Lots 1 and 2, Block H, Westerlea Village Addition. The 1.04-acre site is located on the southwest corner of Summitlawn Drive and University Avenue. The applicants propose to redevelop the site with unspecified commercial uses. The site is currently developed with two, one-story single-family residences (built 1959, 1964), which face Summitlawn Drive.

The surrounding area is characterized by a mixture of single-family residences, commercial uses and undeveloped property zoned for commercial uses. The properties to the south, northeast and east are zoned SF-5 and are developed with single-family residences (mid 1950s to mid 1960s). The most immediate property located west of the site is zoned LC. This parcel is currently being developed as a restaurant(s). Properties located north of the site (across University Avenue) are zoned LC, with multiple Protective Overlays attached to them. The property directly north of the subject site, across University Avenue, is developed with a Pizza Hut Bistro restaurant (2005). The possible rezoning of the subject site and the recent rezoning (ZON2008-22 and SUB2008-97) of two residential lots/single-family residences located west of the subject site, leaves four SF-5 zoned residential lots/single-family residences left from the eight SF-5 zoned residential lots/single-family residences that were originally part of Block H of the Westerlea Village Addition.

Although the site has been identified in the Comprehensive Plan as appropriate for “Local Commercial” uses, the close proximity (abutting south and across Summitlawn Drive to the east of the site) of the site to an established single-family neighborhood requires any commercial uses on the site to be developed so as to minimize any negative impact on the neighborhood. The site was originally platted as two single-family lots and is part of the remaining western edge of this neighborhood. The earlier rezoning (1992 to 2002 from SF-5 to LC) of properties located north of the site and rezoning (2008 from SF-5 to LC) of properties abutting, offer similar considerations to the subject site. The properties located north of University Avenue and the property abutting to the west were SF-5 zoned single-family residences on lots platted from the same subdivision, the Westerlea Village Addition, as the subject site. To buffer the abutting and adjacent existing single-family residences from the unspecified commercial development on the site, planning staff recommends that a Protective Overlay (PO) be approved that continues the development controls established during the approval of the zoning changes on the adjacent northern properties and the abutting western properties. The recommended PO limits signage, lighting, noise and building height; requires a six foot high masonry wall and a landscape buffer along the south and east property lines; and prohibits certain uses that are less compatible with residential development. If in the future the zoning of the residential properties to the south is changed to allow commercial uses, then the provisions of the Protective Overlay could be amended, but planning staff finds that any high-intensity, auto-oriented commercial use of the subject site not appropriate at this time.

Access to the south subject lot is from Summitlawn Drive, a residential road that dead ends 300 feet south from the south subject site, just before Taft Avenue. The north subject lot currently has access to University Avenue, also a residential road. The proposed LC zoning would generate commercial traffic from the subject site onto the residential streets they currently have access to and into the residential neighborhood. Complete access control onto University Avenue may be necessary, as reviewed by the Traffic Engineer. Possible future rezoning of the SF-5 zoned single-family residences located south of the site make complete access control onto University Avenue and Summitlawn Drive and cross lot access a critical consideration. Planning staff recommends that the subject site be replatted to ensure that all access control, drainage plans, utilities and easements, cross lot access, sufficient street right-of-way and street improvements, including any needed guarantees, would be in place prior to the zoning being completed.

Analysis: At the Metropolitan Area Planning Commission (MAPC) meeting held December 2, 2010, the MAPC voted (9-0) to recommend approval of the request for LC zoning with a Protective Overlay. The case was a consent item for the MAPC, and no one from the public spoke for or against the application.

At the DAB V meeting held December 6, 2010, the DAB voted (7-0) to recommend approval of the request for LC zoning with the Protective Overlay.

No protests have been filed on this application.

The staff recommended Protective Overlay contains the following:

- A. No off-site or portable signs shall be permitted on the subject property. No signs shall be permitted along the face of any building or along any street frontage that faces or is across the street from any property that is in a residential zoning district. Signs shall be monument style and all other signs shall be according to the City of Wichita Sign Code for the LC Limited Commercial zone district.
- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 25-feet.
- C. Outdoor speakers and sound amplification systems shall not be permitted, with the exception of restaurant order boards.
- D. No buildings shall exceed one story in height with a maximum building height of 25 feet.
- E. A six (6) to eight (8) foot tall masonry wall shall be constructed parallel to the east property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning. A six (6) to eight (8) foot tall cedar fence shall be constructed parallel to the south property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning.
- F. A 10-foot wide landscape buffer will be provided along the south and east sides of the subject site. A minimum of five foot tall evergreens will be planted at 20-foot centers along the south and east sides. Landscaping will be 1.5 times more than the minimum required by the Landscape Ordinance along the site's street frontage.
- G. All deliveries and trash service shall be between the hours of 6 AM and 10 PM.
- H. The subject site shall comply with the compatibility setback standards on the interior side (south) and rear yards (east).
- I. At the time of platting, all access onto public right-of-way, cross lot access, utility easements, drainage and the final size and configuration of the subject site shall be resolved, per the standards of the Subdivision standards, as reviewed and recommended by the staff and the appropriate appointed and governing bodies.
- J. The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; service station; tavern and drinking establishment; and vehicle repair.

Financial Considerations: There are no financial considerations in regards to the zoning request.

Goal Impact: To promote economic vitality.

Legal Considerations: The ordinance has been reviewed and approved as to form by the Law Department.

Recommendation/Actions:

1. Adopt the findings of the MAPC, approve the zone change subject to the provisions of Protective Overlay #249, authorize the Mayor to sign the ordinance and place the ordinance on first reading (simple majority required).

(An override of the Planning Commission's recommendation requires a two-thirds majority vote of the City Council on the first hearing.)

Attachments:

- MAPC Minutes
- DAB Memo
- Ordinance

**EXCERPT OF THE DECEMBER 2, 2010 WICHITA-SEDGWICK COUNTY
METROPOLITAN AREA PLANNING COMMISSION HEARING**

Case No.: ZON2010-43 - Balbir and Treva June Mathur (Owner/Applicant), George Weaver (Owner/Applicant), Freddy's Frozen Custard (Contract Purchaser) and Baughman Company, Attn: Phil Meyer (Agent) requests City zone change from SF-5 Single-Family Residential to LC Limited Commercial, with a PO Protective Overlay on property described as;

Lots 1 and 2, Block H, Westerlea Village Addition to Wichita, Sedgwick County, Kansas.

BACKGROUND: The applicants' request a zone change from SF-5 Single-family Residential ("SF-5") to LC Limited Commercial ("LC") on Lots 1 & 2, Block H, Westerlea Village Addition. The 1.04-acre site is located on the southwest corner of Summitlawn Drive and University Avenue. The applicants propose to redevelop the site with unspecified commercial uses. The site is currently developed with two, one-story single-family residences (built 1959, 1964), which face Summitlawn Drive.

The surrounding area is characterized by a mixture of single-family residences, commercial uses and undeveloped property zoned for commercial uses. The properties to the south, northeast and east are zoned SF-5 and are developed with single-family residences (mid 1950s – mid 1960s). The most immediate property located west of the site is zoned LC. This parcel is currently being developed as a restaurant(s). Properties located north of the site (across University Avenue) are zoned LC, with multiple Protective Overlays attached to them. The property directly north of the subject site, across University Avenue, is developed with a Pizza Hut Bistro restaurant (2005). The possible rezoning of the subject site and the recent rezoning (ZON2008-22 & SUB2008-97) of two residential lots/single-family residences located west of the subject site, leaves four SF-5 zoned residential lots/single-family residences left from the eight SF-5 zoned residential lots/single-family residences that were originally part of Block H of the Westerlea Village Addition.

Although the site has been identified in the Comprehensive Plan as appropriate for "Local Commercial" uses, the close proximity (abutting south and across Summitlawn to the east of the site) of the site to an established single-family neighborhood requires any commercial uses on the site to be developed so as to minimize any negative impact on the neighborhood. The site was originally platted as two single-family lots and is part of the remaining western edge of this neighborhood. The earlier rezoning (1992- 2002 from SF-5 to LC) of properties located north of the site and rezoning (2008 SF-5 to LC) of properties abutting, offer similar considerations to the subject site. The properties located north of University and the property abutting to the west were SF-5 zoned single-family residences on lots platted from the same subdivision, the Westerlea Village Addition, as the subject site. To buffer the abutting and adjacent existing single-family residences from the unspecified commercial development on the site, planning staff recommends that a Protective Overlay (PO) be approved that continues the development controls established during the approval of the zoning changes on the adjacent northern properties and the abutting western properties. The recommended PO limits signage, lighting, noise, and building height; requires a six foot high masonry wall and a landscape buffer along the south and east property lines; and prohibits certain uses that are less compatible with residential development. If in the future the zoning of the residential properties to the south is

changed to allow commercial uses, then the provisions of the Protective Overlay could be amended, but planning staff finds that any high-intensity, auto-oriented commercial use of the subject site not appropriate at this time.

Access to the south subject lot is from Summitlawn Drive, a residential road that dead ends 300-feet south from the south subject site, just before Taft Avenue. The north subject lot currently has access to University Avenue, also a residential road. The proposed LC zoning would generate commercial traffic from the subject site onto the residential streets they currently have access to and into the residential neighborhood. Complete access control onto University may be necessary, as reviewed by the Traffic Engineer. Possible future rezoning of the SF-5 zoned single-family residences located south of the site make complete access control onto University and Summitlawn and cross lot access a critical consideration. Planning staff recommends that the subject site be replatted to ensure that all access control, drainage plans, utilities and easements, cross lot access, sufficient street right-of-way and street improvements, including any needed guarantees, would be in place prior to the zoning being completed.

CASE HISTORY: The subject property is Lots 1 & 2, Block H, Westerlea Village Addition, which was recorded August 11, 1949.

ADJACENT ZONING AND LAND USE:

NORTH:	LC	Restaurant
SOUTH:	SF-5	Single family residences
EAST:	SF-5	Single family residences
WEST:	LC	Future Restaurants

PUBLIC SERVICES: The subject site has frontage along University Avenue and Summitlawn Drive. Summitlawn Drive and University Avenue are both paved residential streets with open ditches. University Avenue intersects Ridge Road South, to the west, and Summitlawn Drive dead ends before intersecting with Taft Avenue, a four-lane urban collector, to the south. Taft and University intersect with Mid-Continent Road a four-lane, with turn lanes, principal arterial. Mid-Continent Road merges with and becomes Ridge Road around its intersection with University. Ridge Road is a four-lane, with turn lanes, principal arterial. There is a raised, full curbed median strip on Mid-Continent/Ridge Road, from Maple Avenue to the Kellogg Street/US-54 interchange, with cuts at its intersections with Taft (traffic lights) and University. The 2030 Transportation Plan indicates no change to the status of any of these roads. The nearest available traffic counts in the area show approximately 23,700 average trips per day on the nearest section of Mid-Continent/Ridge Road and 10,800 average trips per day on Taft, near its intersection with Mid-Continent/Ridge Road. Municipal water and sewer services are currently provided to the subject site.

CONFORMANCE TO PLANS/POLICIES: The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the area between University Avenue, Taft, Mid-Continent Road/Ridge Road, and Summitlawn Drive as appropriate for “Local Commercial” development. The “Local Commercial” category includes commercial, office and personal service uses that do not have a regional draw. In order for the recommendation of the Land Use Guide to be consistent with the Commercial Locational Guideline regarding commercial traffic not accessing residential streets, the properties in this area would need to be replatted to front only Mid-Continent Road/Ridge Road and University Avenue. The Commercial Locational Guidelines of

the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets.

RECOMMENDATION: Based upon information available prior to the public hearings, planning staff recommends that the request be APPROVED, subject to replatting within one year and subject to the following provisions of a Protective Overlay:

- A. No off-site or portable signs shall be permitted on the subject property. No signs shall be permitted along the face of any building or along any street frontage that faces or is across the street from any property that is in a residential zoning district. Signs shall be monument style and all other signs shall be according to the City of Wichita Sign Code for the LC Limited Commercial zone district.
- B. Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 25-feet.
- C. Outdoor speakers and sound amplification systems shall not be permitted, with the exception of restaurant order boards.
- D. No buildings shall exceed one story in height with a maximum building height of 25 feet.
- E. A six (6) to eight (8) foot tall masonry wall shall be constructed parallel to the east property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning. A six (6) to eight (8) foot tall cedar fence shall be constructed parallel to the south property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning.
- F. A 10-foot wide landscape buffer will be provided along the south and east sides of the subject site. A minimum of five foot tall evergreens will be planted at 20-foot centers along the south and east sides. Landscaping will be 1.5 times more than the minimum required by the Landscape Ordinance along the site's street frontage.
- G. All deliveries and trash service shall be between the hours of 6 a.m. and 10 p.m.
- H. The subject site shall comply with the compatibility setback standards on the interior side (south) and rear yards (east).
- I. At the time of platting, all access onto public right-of-way, cross lot access, utility easements, drainage and the final size and configuration of the subject site shall be resolved, per the standards of the Subdivision standards, as reviewed and recommended by the staff and the appropriate appointed and governing bodies.

- J. The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; group home; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; service station; tavern and drinking establishment and vehicle repair.

This recommendation is based on the following findings:

1. **The zoning, uses and character of the neighborhood:** The surrounding area is characterized by a mixture of single-family residences, commercial uses and undeveloped property zoned for commercial uses. The properties to the south, northeast and east are zoned SF-5 and are developed with single-family residences (mid 1950s – mid 1960s). The most immediate property located west of the site is zoned LC. This parcel is currently being developed as a restaurant(s). Properties located north of the site (across University Avenue) are zoned LC, with multiple Protective Overlays attached to them. The property directly north of the subject site, across University Avenue, is developed with a Pizza Hut Bistro restaurant (2005). The possible rezoning of the subject site and the recent rezoning (ZON2008-22 & SUB2008-97) of two residential lots/single-family residences located west of the subject site, leaves four SF-5 zoned residential lots/single-family residences left from the eight SF-5 zoned residential lots/single-family residences that were originally part of Block H of the Westerlea Village Addition.
2. **The suitability of the subject property for the uses to which it has been restricted:** The subject property is zoned SF-5 which accommodates moderate-density, single-family residential development and complementary land uses. The site is currently developed with single-family residences. Recently rezoned single-family lots to commercial zoning and commercial development located north and east of the site also make this site less desirable for single-family residences. Additionally, the site is located under the approach to Mid-Continent Airport, which could make this site less desirable for residential use in the future.
3. **Extent to which removal of the restrictions will detrimentally affect nearby property:** Detrimental affects should be minimized by the conditions of a Protective Overlay which would limit signage, lighting, noise, and building height; require a six-foot high masonry wall and landscape buffer along the south and east property lines; and prohibit certain uses that are less compatible with surrounding residential development.
4. **Conformance of the requested change to the adopted or recognized Comprehensive Plan and policies:** The 2030 Wichita Functional Land Use Guide of the Comprehensive Plan identifies the area between University Avenue, Taft, Mid-Continent Road/Ridge Road, and Summitlawn Drive as appropriate for “Local Commercial” development. The “Local Commercial” category includes commercial, office and personal service uses that do not have a regional draw. In order for the recommendation of the Land Use Guide to be consistent with the Commercial Locational Guideline regarding commercial traffic not accessing residential streets, the properties in this area would need to be replatted to front only Mid-Continent Road/Ridge Road and University Avenue. The Commercial

Locational Guidelines of the Comprehensive Plan recommend that commercial sites should be located adjacent to arterials and should have site design features which limit noise, lighting, and other activity from adversely impacting surrounding residential areas. Additionally, the Commercial Locational Guidelines of the Comprehensive Plan recommend that commercially-generated traffic should not feed directly onto local residential streets.

5. **Impact of the proposed development on community facilities:** Detrimental impacts on traffic should be minimized through the replatting process, which should limit access to the subject site to an arterial street and through cross lot access. Other community facilities should not be adversely impacted.

DERRICK SLOCUM, Planning Staff presented the Staff Report.

MOTION: To approve subject to staff recommendation.

HILLMAN moved, **DOWNING** seconded the motion, and it carried (9-0).



INTEROFFICE MEMORANDUM

TO: Metropolitan Area Planning Commission Members
Mayor and Wichita City Council Members

FROM: Megan Buckmaster, Neighborhood Assistant District V

SUBJECT: ZON2010-00043

DATE: December 17, 2010

On Monday, December 06, 2010, the District Advisory Board (DAB) for Council District considered a City zone change request from SF-5 Single- Family Residential to LC Limited Commercial, with a PO Protective Overlay located east of Ridge Road, south of Maple Street, on the southwest corner of Summitlawn Street and University Avenue

The DAB expressed several concerns:

- Screen material: building a wood fence vs. a more permanent masonry wall.
- Communication with residents.

All concerns/ questions were addressed by planning staff and the agent for the applicant.

A motion was made to approve the recommendation and move forward to Council for vote. The motion passed 7-0.

Action: DAB V recommends this request move forward to City Council for vote.

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00043

Zone change request from SF-5 Single-Family Residential ("SF-5") to LC Limited Commercial ("LC"), with a PO Protective Overlay on properties described as:

Lots 1 and 2, Block H, Westerlea Village Addition to Wichita, Sedgwick County, Kansas; generally located east of Ridge Road, south of Maple Street, on the southwest corner of Summitlawn Street and University Avenue.

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #248:

- A.** No off-site or portable signs shall be permitted on the subject property. No signs shall be permitted along the face of any building or along any street frontage that faces or is across the street from any property that is in a residential zoning district. Signs shall be monument style and all other signs shall be according to the City of Wichita Sign Code for the LC Limited Commercial zone district.
- B.** Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 25-feet.
- C.** Outdoor speakers and sound amplification systems shall not be permitted, with the exception of restaurant order boards.
- D.** No buildings shall exceed one story in height with a maximum building height of 25 feet.
- E.** A six (6) to eight (8) foot tall masonry wall shall be constructed parallel to the east property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning. A six (6) to eight (8) foot tall cedar fence shall be constructed parallel to the south property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning.
- F.** A 10-foot wide landscape buffer will be provided along the south and east sides of the subject site. A minimum of five foot tall evergreens will be planted at 20-foot centers along the south and east sides. Landscaping will be 1.5 times more than the minimum required by the Landscape Ordinance along the site's street frontage.

- G.** All deliveries and trash service shall be between the hours of 6 AM and 10 PM.
- H.** The subject site shall comply with the compatibility setback standards on the interior side (south) and rear yards (east).
- I.** At the time of platting, all access onto public right-of-way, cross lot access, utility easements, drainage and the final size and configuration of the subject site shall be resolved, per the standards of the Subdivision standards, as reviewed and recommended by the staff and the appropriate appointed and governing bodies.
- J.** The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; service station; tavern and drinking establishment; and vehicle repair.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this ____ day of _____, 201__.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

ORDINANCE NO. _____

AN ORDINANCE CHANGING THE ZONING CLASSIFICATIONS OR DISTRICTS OF CERTAIN LANDS LOCATED IN THE CITY OF WICHITA, KANSAS, UNDER THE AUTHORITY GRANTED BY THE WICHITA-SEDGWICK COUNTY UNIFIED ZONING CODE, SECTION V-C, AS ADOPTED BY SECTION 28.04.010, AS AMENDED.

BE IT ORDAINED BY THE GOVERNING BODY
OF THE CITY OF WICHITA, KANSAS.

SECTION 1. That having received a recommendation from the Planning Commission, and proper notice having been given and hearing held as provided by law and under authority and subject to the provisions of The Wichita-Sedgwick County Unified Zoning Code, Section V-C, as adopted by Section 28.04.010, as amended, the zoning classification or districts of the lands legally described hereby are changed as follows:

Case No. ZON2010-00043

Zone change request from SF-5 Single-Family Residential ("SF-5") to LC Limited Commercial ("LC"), with a PO Protective Overlay on properties described as:

Lots 1 and 2, Block H, Westerlea Village Addition to Wichita, Sedgwick County, Kansas; generally located east of Ridge Road, south of Maple Street, on the southwest corner of Summitlawn Street and University Avenue.

SUBJECT TO THE FOLLOWING PROVISIONS OF PROTECTIVE OVERLAY DISTRICT #248:

- A.** No off-site or portable signs shall be permitted on the subject property. No signs shall be permitted along the face of any building or along any street frontage that faces or is across the street from any property that is in a residential zoning district. Signs shall be monument style and all other signs shall be according to the City of Wichita Sign Code for the LC Limited Commercial zone district.
- B.** Light poles shall be of the same color and design and shall have cut-off fixtures which direct light away from any abutting or adjacent properties that are in a residential zoning district. Light poles shall be limited to a maximum height, including the base of the light pole, of 25-feet.
- C.** Outdoor speakers and sound amplification systems shall not be permitted, with the exception of restaurant order boards.
- D.** No buildings shall exceed one story in height with a maximum building height of 25 feet.
- E.** A six (6) to eight (8) foot tall masonry wall shall be constructed parallel to the east property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning. A six (6) to eight (8) foot tall cedar fence shall be constructed parallel to the south property line of the subject site, where it abuts existing single-family residences and SF-5 Single-family Residential zoning.
- F.** A 10-foot wide landscape buffer will be provided along the south and east sides of the subject site. A minimum of five foot tall evergreens will be planted at 20-foot centers along the south and east sides. Landscaping will be 1.5 times more than the minimum required by the Landscape Ordinance along the site's street frontage.

- G.** All deliveries and trash service shall be between the hours of 6 AM and 10 PM.
- H.** The subject site shall comply with the compatibility setback standards on the interior side (south) and rear yards (east).
- I.** At the time of platting, all access onto public right-of-way, cross lot access, utility easements, drainage and the final size and configuration of the subject site shall be resolved, per the standards of the Subdivision standards, as reviewed and recommended by the staff and the appropriate appointed and governing bodies.
- J.** The following uses shall not be permitted: adult entertainment establishment; group residence; correctional placement residence; recycling collection station; reverse vending machine; car wash; convenience store; night club; recreation and entertainment; service station; tavern and drinking establishment; and vehicle repair.

SECTION 2. That upon the taking effect of this Ordinance, the above zoning changes shall be entered and shown on the "Official Zoning Map" previously adopted by reference, and said official zoning map is hereby reincorporated as a part of the Wichita-Sedgwick County Unified Zoning Code as amended.

SECTION 3. That this Ordinance shall take effect and be in force from and after its adoption and publication in the official City paper.

ADOPTED this _____ day of _____, 201__.

ATTEST:

Karen Sublett, City Clerk

Carl Brewer, Mayor

(SEAL)

Approved as to form:

Gary E. Rebenstorf, Director of Law

**City of Wichita
City Council Meeting
January 4, 2011**

TO: Wichita Airport Authority

SUBJECT: Taxiway A1 Extension and Apron
Change Order No. 2
Colonel James Jabara Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the change order.

Background: On June 12, 2007 the Wichita Airport Authority (WAA) approved a project to extend Taxiway A1 and construct an apron for pending tenant development with a budget of \$1,040,000. On May 4, 2010 the WAA increased the budget to \$1,750,000 to reflect the project's final scope for construction. A construction contract with Dondlinger and Sons was approved on May 25, 2010 through the Board of Bids process.

Analysis: In accordance with the Authority's lease agreement with Sedgwick County for the National Center for Aviation Training (NCAT), the Authority was obligated to construct this taxiway and apron to serve the NCAT complex. This change order provides for substitution of grass and adjusting of some final quantities.

	Amount	Description	Date
Contract	\$904,994	Contract with Dondlinger & Sons	5/25/2010
CO No. 1	183	Pavement mix change, replace pavement panels	11/16/2010
CO No. 2	2,355	Landscaping and adjusting quantities	1/4/2011
	<u>\$907,532</u>	<u>Total Contract</u>	

Financial Considerations: The current project budget includes funding for this change order. This change order in the amount of \$2,355 represents a less than one percent increase from the original contract. This project is funded through a combination of future Federal Aviation Administration (FAA) Airport Improvement Program (AIP) grant funding and general obligation bonds repaid with Airport revenue.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through the development of airfield pavements to serve the aviation community.

Legal Considerations: The Law Department has approved the agreement as to legal form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 2.

RECEIVED OCT 22 2010
RECEIVED

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PEC

CHANGE ORDER # 2
Wichita Airport Authority
Colonel James Jabara Airport
AIP Project No.: 3-20-0089-FUTURE
COW Project Number 467-054

CHANGE ORDER

No. 2

Dated Thursday, October 21, 2010

Owner's Project No. FAA AIP No. 3-20-0089-(Future) City of Wichita No. 467-054

Project: Construction of Taxiway A-1, Apron, and Channel Improvements
At Colonel James J. Jabara Airport, Wichita Kansas

Owner: The Wichita Airport Authority

Contractor: Dondlinger & Sons Construction Co., Inc. Contract Date: 25 May 2010

Contract For: (a) Earthwork includes excavation and/or placement of subgrade material within the project limits, preparation and compaction of the project subgrade to the lines and grades shown on the plans, channel grading outside the neat lines of pavement, and placement of topsoil. (b) Paving work includes construction of (1) treated drainage layer, and (2) portland cement concrete pavement. (c) Seeding and sodding. (d) Installation of handholes and taxiway edge lights. (e) Miscellaneous storm sewer, manhole construction, and RCB construction of pavement sub-drains. (f) Installation of temporary chain link fence. (g) Painting taxiway pavement markings. Also included is all incidental, supplementary and associated work necessary to complete the above improvements. The Contractor shall complete all of the Phase I work described as follows, within 60 calendar days from the Start Date noted on the Construction Notice to Proceed. 1) complete all work necessary to construct Taxiway A1 and Apron, including painting, edge lights, markers, and aircraft tie-downs, and fully open to aircraft traffic. 2) complete all work north of Taxiway A1, including seeding. The Contractor shall complete all project work, except permanent seeding, within 90 Calendar Days from the Start Date noted on the Construction Notice to Proceed. The Contractor shall complete that portion of the Phase I work, as shown on Sheet No. 8 (All work in the area between 100' Lt. and 50' Lt. from the Apron Baseline shall be fully completed, accepted, and available for Tennant occupancy), on or before August 02, 2010.

CHANGE ORDER # 2
Wichita Airport Authority
Colonel James Jabara Airport
AIP Project No.: 3-20-0089-FUTURE
COW Project Number 467-054

To: Dondlinger & Sons Construction Co., Inc., Contractor

You are directed to make the changes noted below in the subject contract:

By Direction of the Wichita Airport Authority

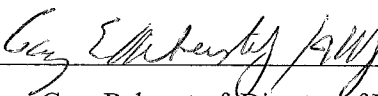
Carl Brewer, Owner

Date: _____



Victor White, Director of Airports

Date: 12/21/10



Gary Rebenstorf, Director of Law
Approved as to form

Date: 12-21-10

Attest

Date: _____

Nature of Change:

- 1] Plant brome grass instead of buffalograss on the disturbed areas south of the 10' x 5' RCB not covered with sod and north of Taxiway A1 downstream of the Heavy Stone Riprap to the Construction Limits. The credit for this change is \$(7,661.39). There is no change in contract time due to this change.
- 2] Adjust current contract quantities to filed measured or computed quantities. The cost for this change is \$10,015.88.

CHANGE ORDER # 2
Wichita Airport Authority
Colonel James Jabara Airport
AIP Project No.: 3-20-0089-FUTURE
COW Project Number 467-054

Taxiway Contract Price Prior to This Change Order	\$ 134,525.82
Apron Contract Price Prior to This Change Order	\$ 770,650.82
Total Contract Price Prior to This Change Order	\$ 905,176.64

Taxiway Net Increase Resulting from This Change Order	\$ 3,178.31
Apron Net Increase Resulting from This Change Order	\$ (823.82)
Total Net Increase Resulting from This Change Order	\$ 2,354.49

Current Taxiway Contract Price Including This Change Order	\$ 137,704.13
Apron Contract Price Including This Change Order	\$ 769,827.00
Total Contract Price Including This Change Order	\$ 907,531.13

Total Phase 1 Contract Time Prior to This Change Order	66	Calendar Days
Total Phase 1 Net Increase Resulting From This Change Order	0	Calendar Days
Total Phase 1 Contract Time Including This Change Order	66	Calendar Days
Total Phase 2 Contract Time Prior to This Change Order	90	Calendar Days
Total Phase 2 Net Increase Resulting From This Change Order	0	Calendar Days
Total Phase 2 Contract Time Including This Change Order	90	Calendar Days

The Above Changes Are Approved:

Professional Engineering Consultants, P.A.

By: 

Date: 01 DECEMBER 2010

The Above Changes Are Accepted:

Dondlinger & Sons Construction Co., Inc.
Contractor

By: 

Date: 12-1-10

CHANGE ORDER # 2
Wichita Airport Authority
Colonel James Jabara Airport
AIP Project No.: 3-20-0089-FUTURE
COW Project Number 467-054

The following Change Order is a modification to the Project Plans and Specifications. The Change Order was prepared at the request of the Owner and was necessary for the following:

ITEM NO. 1: Plant brome grass instead of buffalograss on the disturbed areas south of the 10' x 5' RCB not covered with sod and north of Taxiway A1 downstream of the Heavy Stone Riprap to the Construction Limits.

A new bid item #45 Permanent Seed (Brome) was created for this work with the breakdown as follows:

<u>TAXIWAY</u>				
<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>COST</u>	<u>EXTENSION</u>
45 Permanent Seed (Brome)	7	MSF	\$ 22.96	\$ 160.72

<u>APRON</u>				
<u>ITEM</u>	<u>QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>COST EXTENSION</u>
45 Permanent Seed (Brome)	234	MSF	\$ 22.96	\$ 5,372.64

The impact to existing items due to this change is as follows:

<u>TAXIWAY</u>							
<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>NEW QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>	
24 Seeding (Temporary)	40	M.S.F.	\$ 8.75	33	-7	\$ (61.25)	
25 Seeding (Permanent)	40	M.S.F.	\$ 46.00	33	-7	\$ (322.00)	
TAXIWAY TOTALS						\$ (383.25)	

<u>APRON</u>							
<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>NEW QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>	
24 Seeding (Temporary)	412	M.S.F.	\$ 8.75	178	-234	\$ (2,047.50)	
25 Seeding (Permanent)	412	M.S.F.	\$ 46.00	178	-234	\$ (10,764.00)	
APRON TOTALS						\$ (12,811.50)	

TAXIWAY TOTALS FOR ITEM NO. 1	\$ (222.53)
APRON TOTALS FOR ITEM NO. 1	<u>\$ (7,438.86)</u>
TOTAL CREDIT FOR ITEM NO. 1	\$ (7,661.39)

There shall be no change in contract time due to this change.

CHANGE ORDER # 2
Wichita Airport Authority
Colonel James Jabara Airport
AIP Project No.: 3-20-0089-FUTURE
COW Project Number 467-054

ITEM NO. 2: This item adjusts some of the current contract items to the field measured or computed quantities and does not include the change for Item No. 1. The following existing items are affected by this change:

The impact to existing contract items is shown below.

TAXIWAY

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>NEW QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
4 Temporary Security Fence	154	L.F.	\$ 3.85	0	-154	\$ (592.90)
15 Hydrated Lime	16	TON	\$ 425.00	27	7	\$ (2,975.00)
23 Taxiway Pavement Painting	1,083	S.F.	\$ 2.24	1,394	311	\$ 696.64
33 Conduit Trench and Backfill	180	L.F.	\$ 2.00	168	-12	\$ (24.00)
34 2" PVC Conduit	180	L.F.	\$ 0.40	168	-12	\$ (4.80)
35 #8 1/C 5KV Primary Cable	315	L.F.	\$ 0.90	332	17	\$ 15.30
36 Bare Counterpoise, Trench	145	L.F.	\$ 1.10	141	-4	\$ (4.40)
39 Vegetation Control Ring	6	EA.	\$ 85.00	10	4	\$ 340.00
						\$ 3,400.84

APRON

<u>ITEM</u>	<u>PREVIOUS QUANTITY</u>	<u>UNIT</u>	<u>UNIT COST</u>	<u>NEW QTY</u>	<u>QTY ADJUST</u>	<u>COST ADJUST</u>
4 Temporary Security Fence	872	L.F.	\$ 3.85	0	(872)	\$ (3,357.20)
5 Remove/Reset Temp Const Fence	1	L.S.	\$7,315.00	0	(1)	\$ (7,315.00)
15 Hydrated Lime	93	TON	\$ 425.00	134	41	\$ 17,425.00
23 Taxiway Pavement Painting	2,553	S.F.	\$ 2.24	2,534	-19	\$ (42.56)
39 Vegetation Control Ring	28	EA.	\$ 85.00	24	(4)	\$ (340.00)
43 #4/0 Copper Ground Wire	775	L.F.	\$ 3.40	847	72	\$ 244.80
						\$ 6,615.04

TAXIWAY TOTALS FOR ITEM NO. 2 \$ 3,400.84

APRON TOTALS FOR ITEM NO. 2 \$ 6,615.04

TOTAL COST FOR ITEM NO. 2 \$ 10,015.88

There shall be no change in contract time due to this change.

APRON TOTALS FOR CHANGE ORDER NO. 2 \$ (823.82)

TAXIWAY TOTALS FOR CHANGE ORDER NO. 2 \$ 3,178.31

TOTAL COST FOR CHANGE ORDER NO. 2 \$ 2,354.49

**City of Wichita
City Council Meeting
January 4, 2011**

TO: Wichita Airport Authority

SUBJECT: Mid-Continent Drive and Bridge Rehabilitation
Change Order No. 2
Mid-Continent Airport

INITIATED BY: Department of Airports

AGENDA: Wichita Airport Authority (Consent)

Recommendation: Approve the change order.

Background: On November 25, 2008 the Wichita Airport Authority approved the project and budget to rehabilitate the Mid-Continent Drive bridges over Harry Street and Crossfield Road plus other portions of the Mid-Continent Drive pavement. Dondlinger and Sons was awarded the construction contract through the Board of Bids on May 25, 2010.

Analysis: During construction several bridge defects were found and additional road patching was necessary due to excessive deterioration which required quantities to be adjusted. During this work, pavement markings were damaged or removed. Remarketing of the entire project was deemed necessary for consistency and quality of markings to ensure traffic safety. This final change order adjusts pavement markings to field-measured quantities.

	Amount	Description	Date
Contract	\$859,009	Project construction, Dondlinger & Sons, Inc.	5/25/2010
CO No. 1	69,207	Adjust quantities and bridge repairs	12/7/2010
CO No. 2	9,530	Adjust final pavement marking quantities	1/4/2011
	<u>\$937,746</u>	<u>Total Cost</u>	

Financial Considerations: A change order has been prepared to cover these changes in the amount of \$9,530 which will be covered under the existing budget of \$1,266,000. This change order represents less than a one percent increase over the original contract. This project is funded with General Obligation bonds paid for with Airport Revenue.

Goal Impact: The Airport's contribution to the Economic Vitality of Wichita is promoted through maintenance of Airport infrastructure.

Legal Considerations: The Law Department has approved the change order as to legal form.

Recommendations/Actions: It is recommended that the Wichita Airport Authority approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 2.

CHANGE ORDER # 2
CITY OF WICHITA PROJECT # 458-396
CHANGE ORDER

No. 2

Dated Tuesday, December 07, 2010

Owner's Project No. _____ City of Wichita No. 458-396

Project: Mid-Continent Drive (N.B. and S.B. Lanes) Bridge & Concrete Pavement Rehabilitation
At Wichita Mid-Continent Airport, Wichita Kansas

Owner: The Wichita Airport Authority

Contractor: Dondlinger & Sons Construction Co., Inc. Contract Date: 14 June 2010

Contract For: (1) Full depth concrete pavement patching & curb and gutter replacement along N.B. & S.B. Mid-Continent Drive, including the ramps at Crossfield Rd. (2) Remove existing joint sealant and reseal all of the concrete pavement joints, including random cracks along N.B. & S.B. Mid-Continent Drive, including the ramps at Crossfield Rd. (3) Remove & replace a portion of Abutment #2 on the Harry St. bridge. (4) Install new structural steel girder supports and make necessary repairs to the steel girder bottom flanges on Abutment #2 at the Harry St. bridge. (5) Install abutment backwall protection and strip drains, including outfall piping, at both abutments at the Harry St. bridge. (6) Partial & full depth patch repairs on the concrete decks of both the Harry St. & Crossfield Rd. bridges. (7) Remove & replace the existing approach slabs, including the installation of new sleeper slab footings and crushed rock subgrade at both the Harry St. and Crossfield Rd. bridges. (8) Remove, repaint, and reinstall the handrail along both the Harry St. & Crossfield Rd. bridges. (9) Install 4" galvanized conduit along both sides of the Harry St. & Crossfield Rd. bridges. (10) Install slurry grout to fill voids underneath the concrete riprap at the Harry St. bridge. (11) Restore any pavement markings along Mid-Continent Drive including the Crossfield Rd. ramps that were disturbed during construction. (12) Traffic control: Install two median crossovers, set up and maintain traffic control devices throughout the duration of both traffic control phases of the project, Phase I & II.

To: Dondlinger & Sons Construction Co., Inc., Contractor

You are directed to make the changes noted below in the subject contract:

By Direction of the Wichita Airport Authority

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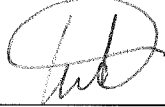
DEC 07 2010

AIRPORT ENGINEERING

CHANGE ORDER # 2
CITY OF WICHITA PROJECT # 458-396

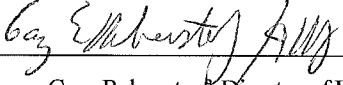
Carl Brewer, Owner

Date: _____



Victor White, Director of Airports

Date: 12/14/10



Gary Rebenstorf, Director of Law
Approved as to form

Date: 12-21-10

Attest

Date: _____

CHANGE ORDER # 2
CITY OF WICHITA PROJECT # 458-396
EXPLANATION OF CHANGES

ADJUSTMENT TO QUANTITIES

Bid Item #4: Pavement Marking

Under run = 1 L.S. = (\$12,250.00)

This item is being under run entirely.

EXTRA WORK

CO2-1: 4" Edge Yellow

Additional 9211.6 L.F. @ \$0.47 = \$4,329.45

This item is being added to account for placement of a Longitudinal 4" Yellow Edge Line with a High Pressure Water Blast in areas prescribed per plan.

CO2-2: 6" Edge White

Additional 9399.3 L.F. @ \$0.70 = \$6,579.51

This item is being added to account for placement of a Longitudinal 6" White Edge Line with a High Pressure Water Blast in areas prescribed per plan.

CO2-3: 6" Solid White

Additional 178.3 L.F. @ \$0.70 = \$124.81

This item is being added to account for placement of a Longitudinal 6" Solid White Line with a High Pressure Water Blast in areas prescribed per plan.

CO2-4: 6" Broken White

Additional 3797.1 L.F. @ \$0.70 = \$2,657.97

This item is being added to account for placement of Longitudinal 6" Broken White Lines with a High Pressure Water Blast in areas prescribed per plan.

CO2-5: 8" White Gore

Additional 907.9 L.F. @ \$1.85 = \$1,679.62

This item is being added to account for placement of Longitudinal 8" White Gore Lines with 70% removal preparation in areas prescribed per plan.

CO2-6: 8" White Chevron

Additional 166.0 L.F. @ \$0.94 = \$156.04

This item is being added to account for placement of 8" White Chevrons with a High Pressure Water Blast in areas prescribed per plan.

CO2-7: 24" White Stop Bars

Additional 111.3 L.F. @ \$3.30 = \$367.29

This item is being added to account for placement of 24" White Stop Bars with a High Pressure Water Blast in areas prescribed per plan.

CO2-8: Arrows

Additional 5 EA @ \$110.00 = \$550.00

This item is being added to account for placement of Left Turn Arrows with a High Pressure Water Blast in areas prescribed per plan.

CO2-9: ONLY Symbol

Additional 4 EA @ \$330.00 = \$1,320.00

This item is being added to account for placement of ONLY Symbols with a High Pressure Water Blast in areas prescribed per plan.

CHANGE ORDER # 2
CITY OF WICHITA PROJECT # 458-396

CO2-10: Mobilization

Additional 1 L.S. @ \$4,015.00 = \$4,015.00

This item is being added to account for the mobilization or manpower and physical resources to the job site for the additional pavement markings added with CO2-1 through CO2-9. 8 additional days are added for this additional work.

458-396 Total Contract Price Prior to This Change Order	\$ 928,215.23
458-396 Net Increase Resulting from This Change Order	\$ 9,529.69
458-396 Total Contract Price Including This Change Order	\$ 937,744.92

Total Contract Time Prior to This Change Order (6 October 2010)	115	Calendar Days
Total Net Increase Resulting From This Change Order	8	Calendar Days
Total Contract Time Including This Change Order (19 November 2010)	123	Calendar Days

The Above Changes Are Approved:


Professional Engineering Consultants, P.A.

By: 

Date: 12/7/2010

The Above Changes Are Accepted:

Dondlinger & Sons Construction Co., Inc.
Contractor

By: 

Date: 12-7-10

Summary of Bid Item Modifications - Change Order No. 2

SECTION 1: ADJUSTMENT TO QUANTITIES

ITEM #	ITEM DESCRIPTION	ORIGINAL QUANTITY	UNIT	ADJUSTED QUANTITY	UNIT PRICE	NET INCREASE / DECREASE
4	Pavement Marking	1	L.S.	0	\$ 12,250.00	\$ (12,250.00)

SECTION 1 ADJUSTMENT \$ (12,250.00)

SECTION 2: EXTRA WORK

ITEM #	ITEM DESCRIPTION	ORIGINAL QUANTITY	UNIT	ADJUSTED QUANTITY	UNIT PRICE	NET INCREASE / DECREASE
CO2-1	4" Edge Yellow	0	L.F.	9211.6	\$ 0.47	\$ 4,329.45
CO2-2	6" Edge White	0	L.F.	9399.3	\$ 0.70	\$ 6,579.51
CO2-3	6" Solid White	0	L.F.	178.3	\$ 0.70	\$ 124.81
CO2-4	6" Broken White	0	L.F.	3797.1	\$ 0.70	\$ 2,657.97
CO2-5	8" White Gore	0	L.F.	907.9	\$ 1.85	\$ 1,679.62
CO2-6	8" White Chevron	0	L.F.	166.0	\$ 0.94	\$ 156.04
CO2-7	24" White Stop Bars	0	L.F.	111.3	\$ 3.30	\$ 367.29
CO2-8	Arrows	0	Ea.	5	\$ 110.00	\$ 550.00
CO2-9	ONLY Symbol	0	Ea.	4	\$ 330.00	\$ 1,320.00
CO2-10	Mobilization	0	LS	1	\$ 4,015.00	\$ 4,015.00

SECTION 2 ADJUSTMENT \$ 21,779.69

TOTAL ADJUSTMENT FOR CHANGE ORDER # 2 \$ 9,529.69

Note: Final Completion date shall be revised from Oct. 6, 2010 to Nov. 19, 2010.
Added 8 days for additional Permanent Pavement Markings

STATEMENTS OF COSTS:

FAA Parking Lot Improvements. Total Cost - \$1,102,280 (Plus temp note interest - \$2,057.67; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$1,102,280.00. (501350/454358).

Apron, Phase I. Total Cost - \$905,690 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$5,205,280). Financing to be issued at this time - \$905,690. (501410/455361).

Apron, Phase II. Total Cost - \$369,780 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$4,648,290). Financing to be issued at this time - \$369,780. (501420/455361).

North Cargo Building Construction. Total Cost - \$6,833,940 (Plus temp note interest - \$15,057.46; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$6,833,940. (501400/455365).

Land Acquisition, 1504 S Ridge Rd. Total Cost - \$82,850 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$82,850. (501700/456368).

Hangar 16 Rehab. Total Cost - \$336,840 (Plus temp note interest - \$3,387.44; less financing previously issued - \$0 and FAA, P FC or other contributions- \$593,257.84). Financing to be issued at this time - \$336,840. (501770/457375).

North Shuttle Lot. Total Cost - \$2,607,190 (Plus temp note interest - \$8,747.80; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$2,607,190. (501790/457376).

Street Side Pavement Rehab. Total Cost - \$386,430 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$386,430. (501800/457379).

2204 S Tyler Building Rehab. Total Cost - \$84,770 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$84,770. (501810/457380).

Interim Customs Facility. Total Cost - \$700,990 (Plus temp note interest - \$1,646.14; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$700,990. (501830/458385).

Administration Building Remodel. Total Cost - \$1,083,520 (Plus temp note interest - \$1,936.67; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$1,083,520. (501822/458386).

Land Acquisition, 1534 S Ridge Rd. Total Cost - \$83,290 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$83,290. (501823/458387).

1761 Airport Road HVAC and Refoof. Total Cost - \$727,230 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$727,230. (501824/458388).

Roof Replacements 2008 - MC. Total Cost - \$67,350 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$67,350. (501827/458390).

Roof Replacements 2008 - Jabara. Total Cost - \$138,320 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$138,320. (510264/458390).

Jabara Taxiway F & G. Total Cost - \$1,409,560 (Plus temp note interest - \$3,352.86; less financing previously issued - \$0 and FAA, P FC or other contributions- \$209,333). Financing to be issued at this time - \$1,409,560. (510230/466052).

Jabara Airfield Electrical Replacement. Total Cost - \$40,920 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$707,570). Financing to be issued at this time - \$40,920. (510263/468053).

Landside Utilities, Phase I. Total Cost - \$3,085,000 (Plus temp note interest - \$7,468.21; less financing previously issued - \$0 and FAA, P FC or other contributions- \$2,319,762). Financing to be issued at this time - \$3,085,000. (501430/455361).

Bridge Rehab & Inspection. Total Cost - \$648,160 (Plus temp note interest - \$0; less financing previously issued - \$0 and FAA, P FC or other contributions- \$0). Financing to be issued at this time - \$648,160. (501835/458396).

**FAA Parking Lot Improvements
Mid-Continent Airport, 1761 and 1801 Airport Road**

City Council
Wichita, Kansas

STATEMENT OF COST

Following is the cost of Construction:

Design	\$133,939.00
Construction	964,638.68
Inspection	890.19
Bidding and Administration	754.46
Cost	<u>\$1,100,222.33</u>
Plus Temporary Note Interest	2,057.67
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$1,102,280.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

**Apron, Phase I
Mid-Continent Airport, Airfield**

City Council
Wichita, Kansas

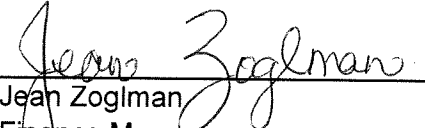
STATEMENT OF COST

Following is the cost of Construction:

Design	\$303,446.12
Construction	5,796,842.61
Inspection	7,007.84
Bidding and Administration	3,673.43
Cost	<u>\$6,110,970.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	(5,205,280.00)
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$905,690.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

**Apron, Phase II
Mid-Continent Airport, Airfield**

City Council
Wichita, Kansas

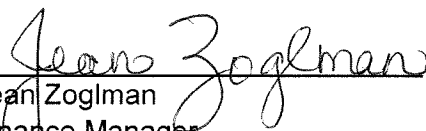
STATEMENT OF COST

Following is the cost of Construction:

Design	\$326,380.34
Construction	4,690,338.86
Inspection	1,124.79
Bidding and Administration	226.01
Cost	<u>\$5,018,070.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	(4,648,290.00)
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$369,780.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

**North Cargo Building Construction
Mid-Continent Airport, 1935 Air Cargo Road**

City Council
Wichita, Kansas

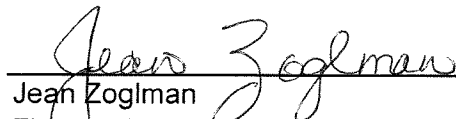
STATEMENT OF COST

Following is the cost of Construction:

Design	\$587,412.52
Construction	6,201,049.57
Inspection	23,310.95
Bidding and Administration	7,109.50
Cost	<u>\$6,818,882.54</u>
Plus Temporary Note Interest	15,057.46
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$6,833,940.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

Land Acquisition

Mid-Continent Airport, 1504 S. Ridge Road

City Council
Wichita, Kansas

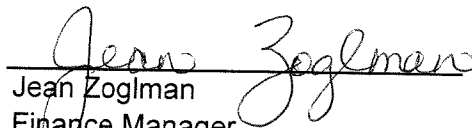
STATEMENT OF COST

Following is the cost of Acquisition:

Appraisal and Administration	\$390.20
Environmental	4,690.05
Site Clean Up	2,058.75
Land Purchase	75,711.00
Cost	<u>\$82,850.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$82,850.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

**Hangar 16 Rehab
Mid-Continent Airport, 1700 Airport Road**

City Council
Wichita, Kansas

STATEMENT OF COST

Following is the cost of Construction:

Design	\$75,515.18
Construction	840,784.89
Inspection	8,450.18
Bidding and Administration	1,960.15
Cost	<u>\$926,710.40</u>
Plus Temporary Note Interest	3,387.44
Less Other Reimbursements	(593,257.84)
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$336,840.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

North Shuttle Lot
Mid-Continent Airport, 1875 Air Cargo Road

City Council
Wichita, Kansas


STATEMENT OF COST

Following is the cost of Construction:

Design	\$171,759.98
Construction	2,413,325.55
Inspection	0.00
Bidding and Administration	13,356.67
Cost	<u>\$2,598,442.20</u>
Plus Temporary Note Interest	8,747.80
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$2,607,190.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

Street Side Pavement Rehab

**Mid-Continent Airport, extending from 1600 Airport Road to
the terminal loop road north of the public parking lots**

City Council
Wichita, Kansas

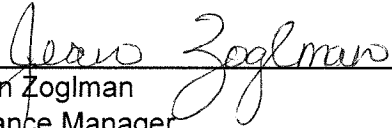
STATEMENT OF COST

Following is the cost of Construction:

Design	\$0.00
Construction	378,860.15
Inspection	0.00
Bidding and Administration	7,569.85
Cost	<u>\$386,430.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$386,430.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

**2204 S. Tyler Building Rehab
Mid-Continent Airport, 2204 S. Tyler**

City Council
Wichita, Kansas

STATEMENT OF COST

Following is the cost of Construction:

Design	\$0.00
Construction	82,463.42
Inspection	1,768.80
Bidding and Administration	537.78
Cost	<u>\$84,770.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$84,770.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

**Interim Customs Facility
Mid-Continent Airport, 1700 Airport Road**

City Council
Wichita, Kansas

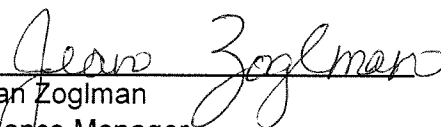
STATEMENT OF COST

Following is the cost of Construction:

Design	\$112,264.77
Construction	574,923.40
Inspection	6,154.01
Bidding and Administration	6,001.68
Cost	<u>\$699,343.86</u>
Plus Temporary Note Interest	1,646.14
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$700,990.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

**Administration Building Remodel
Mid-Continent Airport, 2173 Air Cargo Road**

City Council
Wichita, Kansas

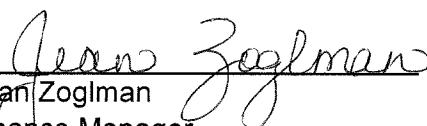
STATEMENT OF COST

Following is the cost of Construction:

Design	\$110,598.00
Construction	965,937.30
Inspection	3,716.68
Bidding and Administration	1,331.35
Cost	<u>\$1,081,583.33</u>
Plus Temporary Note Interest	1,936.67
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$1,083,520.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

Land Acquisition
Mid-Continent Airport, 1534 S. Ridge Road

City Council
Wichita, Kansas

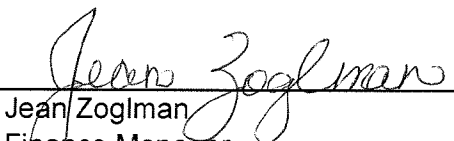
STATEMENT OF COST

Following is the cost of Acquisition:

Appraisal and Administration	\$1,302.04
Environmental	3,256.96
Site Clean Up	0.00
Land Purchase	78,731.00
Cost	<u>\$83,290.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$83,290.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

**1761 Airport Road HVAC and Reroof
Mid-Continent Airport, 1761 Airport Road**

City Council
Wichita, Kansas

STATEMENT OF COST

Following is the cost of Construction:

Design	\$120,185.49
Construction	599,586.54
Inspection	0.00
Bidding and Administration	7,457.97
Cost	<u>\$727,230.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$727,230.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

Roof Replacements 2008 - MC
Mid-Continent Airport, 2010 Airport Road

City Council
Wichita, Kansas

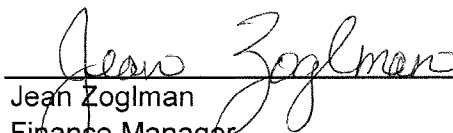
STATEMENT OF COST

Following is the cost of Construction:

Design	\$15,552.16
Construction	50,055.76
Inspection	1,634.47
Bidding and Administration	107.61
Cost	<u>\$67,350.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$67,350.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

**Roof Replacements 2008 - Jabara
Colonel James Jabara Airport, 3340 Jabara Road**

City Council
Wichita, Kansas

STATEMENT OF COST

Following is the cost of Construction:

Design	\$22,467.12
Construction	112,534.84
Inspection	3,287.99
Bidding and Administration	30.05
Cost	<u>\$138,320.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$138,320.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,


Jean Zoglman
Finance Manager
Airport Department

Jabara Taxiway F & G

Colonel James Jabara Airport, southern end of the airfield

City Council
Wichita, Kansas

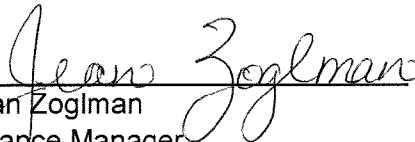
STATEMENT OF COST

Following is the cost of Construction:

Design	\$229,779.06
Construction	1,378,754.73
Inspection	5,519.44
Bidding and Administration	1,486.91
Cost	<u>\$1,615,540.14</u>
Plus Temporary Note Interest	3,352.86
Less Other Reimbursements	0.00
Less FAA Reimbursements	(209,333.00)
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$1,409,560.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

**Jabara Airfield Electrical Replacement
Colonel James Jabara Airport, Airfield**

City Council
Wichita, Kansas

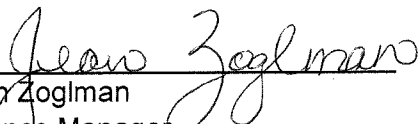
STATEMENT OF COST

Following is the cost of Construction:

Design	\$131,536.81
Construction	614,015.74
Inspection	2,830.42
Bidding and Administration	107.03
Cost	<u>\$748,490.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	(707,570.00)
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$40,920.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

Landside Utilities, Phase I

**Mid-Continent Airport, extending from the intersection of Crossfield Road
and Mid-Continent Drive to 2299 Airport Road**

City Council
Wichita, Kansas

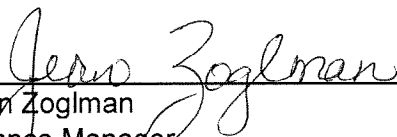
PARTIAL STATEMENT OF COST

Following is the cost of Construction:

Design	\$495,278.66
Construction	4,893,298.74
Inspection	0.00
Bidding and Administration	8,716.39
Cost	<u>\$5,397,293.79</u>
Plus Temporary Note Interest	7,468.21
Less Other Reimbursements	0.00
Less FAA Reimbursements	(2,319,762.00)
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$3,085,000.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

**Bridge Rehab & Inspection
Mid-Continent Airport, Mid-Continent Road bridges
over Harry and Crossfield Roads**

City Council
Wichita, Kansas

PARTIAL STATEMENT OF COST

Following is the cost of Construction:

Design	\$105,465.10
Construction	541,970.47
Inspection	0.00
Bidding and Administration	724.43
Cost	<u>\$648,160.00</u>
Plus Temporary Note Interest	0.00
Less Other Reimbursements	0.00
Less FAA Reimbursements	0.00
Less PFC Reimbursements	0.00
Financing to be Issued at this time	<u>\$648,160.00</u>

STATE OF KANSAS)
SEDGWICK COUNTY) SS
WICHITA, KANSAS

Respectfully Submitted,



Jean Zoglman
Finance Manager
Airport Department

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Working Agreements and Memoranda of Understanding for Cheney Reservoir Watershed Water Quality Projects (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the agreements.

Background: Cheney Reservoir provides 60 percent to 70 percent of the City's water supply. The reservoir has two significant pollution problems: sedimentation, which displaces stored water and reduces the life of the reservoir, and phosphates from runoff, which contributes to plant life (algae) and increase taste and odor problems. In 1993, the City Council approved the concept of the City assuming part of the cost to landowners in the reservoir watershed who implement Best Management Practices (BMPs) to improve water quality and extend the life of the reservoir. Since that time, the Council has approved a number of annual agreements to help implement improvements in the watershed.

The reservoir watershed covers more than 633,000 acres in five counties (Sedgwick, Reno, Stafford, Pratt and Kingman). More than 1,460 projects have been completed in the watershed, resulting in a significant reduction in sediment entering the reservoir, and a reduction in taste and odor events for the City's drinking water. The Cheney Watershed Improvements project has received several national awards and is one of the most successful projects of its kind in the nation.

There are currently four watershed agreements in place, which are presented here for renewal.

Analysis: The four proposed agreements, and the maximum total City contribution for each program, are listed below:

- 1) Working Agreement for Water Quality Projects between Cheney Lake Watershed, Inc. and the City of Wichita (Maximum City contribution: \$80,000)

The proposed agreement offers incentive payments to producers who convert crop land to grass, to slow and filter runoff. This practice has the greatest water quality benefits of all BMPs. Watershed modeling has shown that if the grass planted under the Conservation Reserve Program (CRP) were returned to crop production under conventional tillage, the sediment load would increase by 31 percent.

Under the proposed agreement, the producer would receive from the City a one-time payment of \$100 per acre enrolled, equivalent to about 2.5 years of CRP payments. To be eligible, the producer would have to certify that the land has been in crops for at least the last five years prior to seeding it to grass. The producer would agree to a ten-year management plan for the land to maintain the grass and follow established grazing standards. A target area for this program has been identified in the watershed, but other sites will be considered on a case by case basis.

The agreement commits the City of Wichita Water Utilities to provide a maximum of \$80,000 subject to availability in FY2011 for producers to convert crop land to grass.

2) Working Agreement with the Reno County Conservation District (RCCD) and the Cheney Watershed Citizens Management Committee (CMC) (Maximum City contribution: \$145,000)

A management plan for the watershed has been developed by the Reno County Conservation District (RCCD) and the Cheney Watershed Citizens Management Committee (CMC) that identifies BMPs which will help reduce the pollution entering the reservoir (such as the use of terraces, grassed waterways, range and pasture seeding, riparian filter strips, nutrient management, conservation tillage, crop rotation, brush control, planned grazing systems, and developing rangeland by installing water systems, fencing and filter strips.) The RCCD and the CMC are responsible for promoting and documenting the recommendations in the plan. The proposed working agreement promotes the use of BMPs and establishes procedures for payments to producers who implement these practices and projects.

The agreement also includes incentives for small community wastewater treatment plants to make voluntary improvements that improve the quality of their discharge. The agreement commits the City of Wichita Water Utilities to provide a maximum of \$145,000 subject to availability in FY 2011 to promote the implementation of BMPs.

3) Memorandum of Understanding with the Reno County Conservation District (RCCD) to implement improvements in the watershed (Maximum City contribution: \$65,042)

The RCCD has acquired funds from the Water Resources Cost Share Program (WRCS) and the Non-Point Source Pollution Control Fund (NPS) which reimburse up to 70 percent of the average cost of conservation practices to reduce pollution entering the reservoir. Under the proposed MOU the City of Wichita would provide up to 30 percent of the average cost for the improvements. Administration of the funds will be through the Cheney Watershed Citizens Management Committee, composed of landowners and producers in the watershed, which administers the Watershed Management Plan and promotes the installation of BMPs in the watershed. The other counties in the watershed (Stafford, Pratt and Kingman counties) have also agreed to participate in the program. Projects completed in those counties will be submitted to the City through the Reno County Conservation District.

The total cost to the City shall not exceed \$37,307 for WRCS projects, and \$27,735 for NPS projects, for a total combined amount of \$65,042 subject to availability in FY 2011.

4) Memorandum of Understanding with the Cheney Lake Watershed, Inc. (Maximum City contribution: \$35,700)

The City Council on October 13, 1998 approved a memorandum of understanding (MOU) with the Citizen's Management Committee (CMC), later incorporated as the Cheney Watershed, Inc., to fund a public relations/education position to assist in the activities of the project, and has renewed that MOU annually since then. The staff position has been very successful in increasing the number of projects completed in the watershed, and consequently, improving the water quality in the reservoir.

The total cost of the position is \$41,000. Through this MOU the City agrees to provide funds not to exceed \$32,700 in salary, and another \$3,000 for other contractual expenses, for a total of \$35,700. The remaining \$8,300 cost of the position will be obtained from a grant from the Environmental Protection Agency through KDHE.

Financial Considerations: The Wichita Water Utilities 2011 Adopted Operations Budget has allocated \$167,000 in 2011 for the entire Cheney Watershed project (all four agreements). Although the combined maximum City contribution for all four agreements totals \$325,742, only the first \$167,000 in approved projects would be funded.

Goal Impact: This project addresses the Efficient Infrastructure goal by maintaining and optimizing public facilities and assets.

Legal Considerations: The agreements and memoranda of understanding have been approved as to form by the Law Department.

Recommendations/Actions: It is recommended that the City Council approve the agreement and authorize the necessary signatures.

Attachments: Agreements and Memoranda of Understanding.

Working Agreement for Water Quality Projects
between
Reno County Conservation District
and
Citizens' Management Committee
and
The City of Wichita

Purpose: The implementation of certain practices in the watershed above Cheney Reservoir has positive impacts on the quality of the water in the North Fork of the Ninescah River that enters Cheney Reservoir. It is the intent of this agreement to provide an incentive to producers and communities within the watershed to install these beneficial practices.

Section 319 Demonstration Projects. In order to establish demonstrations of desirable practices that protect water quality, the Reno County Conservation District will provide 60% of the county average cost or 60% of the actual cost of installing the demonstration whichever is less using KDHE/EPA Section 319 funds and Wichita funds will provide 40% of the cost. This Working Agreement will also establish the procedure by which payments to those producers will be processed. This working agreement will cover Fiscal Year 2011 (Oct 1, 2010 through Sept 30, 2011).

Demonstration projects may include but will not be limited to the following practices: range and pasture seeding, riparian filterstrips, in-field filters, crop rotations/legumes, cross fencing of pastures, alternate watering systems, filterstrips for small livestock feeding operations, stream crossings for livestock, fencing of riparian areas, and the enhancement or creation of wetlands. The Citizen's Management Committee will review applications for demonstration funds and make decisions for approval based on available funds and the need for demonstrations of specific practices. Total costs of the incentive payments for the above mentioned demonstrations for FY 11 to the City of Wichita shall not exceed \$10,000.

Special Projects: In order to implement a broad spectrum of desirable practices that protect water quality, the Citizen's Management Committee and the Reno County Conservation District will seek additional cost share funds from all available sources. These sources may include the Kansas Alliance for Wetlands and Streams, the Kansas Water Office, the Kansas Rural Center, the US EPA and other entities. When these sources provide 60 to 70% of the county average cost or 60-70% of the actual cost of the project, the City of Wichita will provide up to 40% of the cost not to exceed a total of 100% of the cost. In cases where there is no established county average cost, payment will be based upon reasonable costs as determined by the CMC. This Working Agreement will also establish the procedure by which payments to those producers will be processed. This working agreement will cover Fiscal Year 2011 (Oct 1, 2010 through Sept 30, 2011).

These special projects may include but will not be limited to the following practices: range and pasture seeding, riparian filterstrips, in-field filters, crop rotations/legumes, cross fencing of pastures, alternate watering systems, filterstrips for small livestock feeding operations, stream crossings for livestock, fencing of riparian areas, and the enhancement or creation of wetlands for water quality protection. The Citizen's Management Committee will review applications for cost share funds and make decisions for approval based on available funds and the impact of implementing specific practices. Total costs of payments for the above mentioned projects for FY 11 to the City of Wichita shall not exceed \$25,000.

Small Community Wastewater Treatment Systems: There are at least 13 small communities within the Cheney Watershed. Eight of these communities have some type of existing community wastewater treatment

system. These communities are Abbyville, Arlington, Haviland, Partridge, Plevna, Preston, Stafford, Sylvia, and Turon. Communities without a community wastewater treatment system are Langdon, Byers, Castleton, and Penalosa.

Many of the community wastewater treatment systems operate near intermittent or perennial streams. In an effort to protect surface water within the watershed, the Cheney Lake Watershed, Inc. will provide incentive payments to small communities that are upgrading a wastewater treatment system.

The proposed treatment system must meet all current requirements of the Kansas Department of Health and Environment and must also be located within contributing portions of the watershed. Byers and Haviland are located in non-contributing portions of the watershed. Each eligible community may apply for a one-time payment of \$2,500 to match state or federal funds awarded to upgrade the treatment system. Individual communities may make application for assistance through the Cheney Lake Watershed office. The Citizens Management Committee of the CLW will review and approve applications. Cheney Lake Watershed, Inc. will make direct payments to participating communities upon completion of the upgrades. A maximum of two applications per year may be approved and funded.

Cheney Lake Watershed, Inc. will invoice the City of Wichita for the amount paid to participating communities and the City will reimburse CLW, Inc. in an amount not to exceed \$5,000 for FY2011.

Perimeter Fencing: The conversion of cropland to pasture has positive water quality benefits if perennial grasses are established, maintained, and properly grazed. Presently there are no federal or state programs that provide financial assistance for perimeter fences around cropland that is converted to perennial grass. This expense is a major deterrent to conversion of cropland to permanent native grass. Conversion of cropland to grass includes land that has been established in native grass for enrollment in the Conservation Reserve Program. Upon expiration of a CRP contract, assistance with the installation of perimeter fence would be an incentive to the landowner to develop a grazing system rather than returning the land to crop production.

A maximum of two (2) miles of fence is eligible for cost share. The cost share rate for Wichita funds will be 50% of county average cost or 50% of the actual cost whichever is less. The remaining 50% will be the responsibility of the producer. The county average cost for the Water Resources Cost Share (WRCS) program in the county where the practice is installed will be the basis for determining the funding level.

Producers must agree to abide by a grazing management plan developed with the NRCS Field Office for a 10 year period following the installation of the fence.

Applications will be taken at the County Field Office. The Citizen's Management Committee will review and approve the applications. Payment process will be handled by Cheney Lake Watershed with CMC/RCCD approval of all payment applications before sending to Wichita. Cost of incentive payments from the City for FY 2011 will not exceed \$75,000.

The CMC may establish priority areas within the watershed for the use of cost share for perimeter fence.

Incentive Payments for Continuous Sign-up Conservation Reserve Program (CRP): The conversion of small, strategic parcels of cropland to native grasses has positive water quality benefits. The grasses act to slow and filter any water flowing over the grassed area. By locating these small parcels of perennial grasses adjacent to perennial or intermittent streams, nearly the same benefits may be achieved regarding water quality as converting an entire field to grass.

Continuous Sign-up CRP is a program of the USDA, administered by the Farm Service Agency. The Buffer Initiative Program is administered by the State Conservation Commission and local conservation districts.

These programs partner to provide annual payments on 10 or 15 year contracts, cost share for establishment, and incentive payments. In order to maximize utilization of these programs in key areas of the watershed, producers may be eligible to receive additional cost share and incentive payments through the Cheney Lake Watershed. The Citizen's Management Committee will establish priority areas and determine CRP practices that will be eligible for Wichita payments.

Continuous CRP provides cost share of up to 90% for the earthwork and seeding of Continuous CRP contracts. The cost share rate for Wichita funds will be up to 30% of county average cost or 30% of the actual cost whichever is less but total cost share funds will not exceed 100% of the actual cost. The cost of payments for establishment of Continuous CRP in FY 2011 will not exceed \$20,000 in Wichita funds. Cost share funds will be paid to the owner or operator, whichever incurred the cost of establishment. The Citizen's Management Committee will review and approve the applications for cost share assistance. Payment process will be handled by Cheney Lake Watershed with CMC/RCCD approval of all cost share payments before sending to Wichita.

An incentive payment of \$200 per acre will be paid to the landowner or farm operator upon approval of the contract with FSA. Incentive payments will be paid to the owner or operator or split between them in the same manner that the Continuous CRP payments are to be paid. Cost of incentive payments to the City for FY 2011 will not exceed \$10,000. Incentive payments will be paid to the owner and/or operator based upon the shares indicated in the CCRP contract for annual payments from USDA. Participants must provide a copy of their CCRP contract to the Cheney Lake Watershed office to receive signup incentive payments.

Reno County Conservation District Responsibilities

The Reno County Conservation District will:

1. Maintain official records relative to farms and other official records.
2. Will provide a breakdown of the units (acres, linear feet, etc.) performed.
 - a. Best Management Practice (BMP) applied.
 - b. Total of the units applied or completed.
 - c. The county average cost for the BMP, if available.
 - d. Actual cost incurred by owner
3. Calculate the amount of the incentive payment using established rates within this agreement. Total amount to a single producer in one year under any single program will not exceed \$10,000.
4. Provide the City of Wichita the name, address and Social Security number of the producer completing the demonstration, the type of practice implemented, and legal description of the demonstration site.
5. Provide an accounting of the program to the City of Wichita.

Citizens' Management Committee will:

1. Establish the sign up period with Reno County Conservation District (RCCD).
2. Review, prioritize, and approve or disapprove applications. Notify producers or communities of approval status.
3. Prepare payment applications and review with RCCD before forwarding to City of Wichita for payment.
4. Make direct payments to small communities for upgrades in wastewater treatment systems and invoice the City of Wichita for reimbursement.

City of Wichita Responsibilities

The City will:

1. Maintain official records relative to the program.
2. Will process payments and send them to the producer after a request for payment is received from the Cheney Lake Watershed office.
3. Provide notification to the Project Office of payments as soon as possible within workload requirements.
4. Provide reimbursement to the Cheney Lake Watershed, Inc. for payments made to small communities for upgrades in wastewater treatment systems.

All Parties:

1. This agreement can be modified with written consent of both parties.
2. This agreement can be terminated with 60 days written notice of either party

Lyle Newby
Reno County Conservation District

10-12-10
Date

William Culbert
Citizen's Management Committee

10-4-10
Date

City of Wichita

Date

THE ABOVE INSTRUMENT RECEIVED OF TO THIS

14th day of December 2010

Dary E. Rebenky, Esq.
City Attorney

Working Agreement for Water Quality Projects

between

Cheney Lake Watershed, Inc.

and

The City of Wichita

Purpose: The implementation of certain practices in the watershed above Cheney Reservoir has positive impacts on the quality of the water in the North Fork of the Ninnescah River that enters Cheney Reservoir. It is the intent of this agreement to provide an incentive to producers and communities within the watershed to install these beneficial practices.

Incentive Payments for Conversion of Cropland to Perennial Grass: The conversion of cropland to native grasses has positive water quality benefits. Perennial grasses act to slow and filter any water flowing over the grassed area. As water is slowed, the infiltration rate into the soil is increased.

In order to encourage the conversion of cropland to perennial grass in key areas of the watershed, producers may be eligible to receive incentive payments through the Cheney Lake Watershed. The Citizen's Management Committee will establish priority areas that will be eligible for incentive payments.

An incentive payment of \$100 per acre will be paid to the landowner upon completion of the seeding and the development of a management plan. Landowners must agree to maintain the grass for ten years from the date of seeding including reseeding at their cost if the initial seeding is not successful. Cost of incentive payments to the City for FY 2011 will not exceed \$80,000.00. Landowners will make application for the incentive at the Cheney Lake Watershed office prior to implementation.

Citizens' Management Committee Responsibilities

Citizens' Management Committee will:

1. Review and approve or disapprove applications. Notify producers of approval status.
2. Provide producer with recommendations and specifications for seeding. Verify grass seeding has been completed. Assist producer with development of a conservation/management plan that will establish, maintain, and improve the grass over the life of the contract.
3. Calculate the amount of the incentive payment using established rates within this agreement.
4. Prepare requests to City of Wichita for incentive payments including the name, address and Social Security number of the producer completing the cropland conversion and legal description of the demonstration site.
5. Provide an accounting of the cropland conversion including acres seeded and the grass species used.

City of Wichita Responsibilities

The City will:

1. Maintain official records relative to the program.
2. Process payments and send them to the producer after a request for payment is received from the Cheney Lake Watershed office.
3. Provide notification to the Project Office of payments as soon as possible within workload requirements.

All Parties:

1. This agreement can be modified with written consent of both parties.
2. This agreement can be terminated with 60 days written notice of either party


Citizen's Management Committee

10-4-10
Date

City of Wichita

Date

THE ABOVE INSTRUMENT ENTERED ON RECORDED

THIS 14th day of December, 2010


CITY ATTORNEY

**Memorandum of Understanding
between Cheney Lake Watershed, Inc.
and the City of Wichita**

Purpose: The implementation of certain practices in the watershed above Cheney Reservoir has positive impacts on the quality of the water in the North Fork of the Ninescah River which enters Cheney Reservoir. The North Fork Ninescah River, Cheney Lake Watershed; Citizen's Management Committee, incorporated as Cheney Lake Watershed, Inc., is responsible for implementing the Watershed Management Plan accepted by the City of Wichita and the Kansas Department of Health and Environment. It is the intent of this agreement to supply funds to provide contractual services needed to enhance and increase watershed improvement.

Personnel Services

The duties and responsibilities of this position will include:

- Assisting the Citizen's Management Committee (CMC) with small group meetings.
- Make follow-up one-on-one contacts, in consultation with the CMC, with producers expressing an interest in implementing Best Management Practices.
- Collect baseline information from producers to establish profitability with environmental soundness using different cropping systems.
- Coordinate with local news media, issue news releases and/or feature articles that highlight watershed projects, especially those that help accomplish watershed goals.
- Assist in preparation of grant requests necessary to assist in funding of projects associated with the watershed improvement management plan.

The City of Wichita agrees to provide funds, not to exceed \$32,700, in year 2011 towards the cost of personnel services and mileage associated with this position.

The Cheney Lake Watershed, Inc. will be responsible for hiring the person filling this position and for supervisory control of the person. Cheney Lake Watershed, Inc. will invoice the city of Wichita for the cost of this position on a regular basis, and the city of Wichita will reimburse Cheney Lake Watershed, Inc. for those expenses.

Other Contractual Expenses

The City of Wichita agrees to provide funds, not to exceed \$3,000, in the year 2011 toward the cost of other contractual expenses of Cheney Lake Watershed, Inc.

Cheney Lake Watershed, Inc. will invoice the City of Wichita for contractual expenses incurred in 2011 and the City of Wichita will reimburse Cheney Lake Watershed, Inc for those expenses.

It is agreed by both parties that this agreement can be modified with the written consent of each party and this agreement can be terminated with 60 days written notice of either party.



Cheney Lake Watershed, Inc.

10-4-10

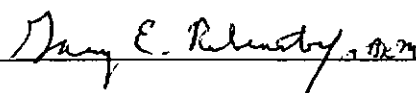
Date

City of Wichita

Date

Attest: _____

Approved this 14th day of December, 2010



City Attorney

**Memorandum of Understanding
between
Reno County Conservation District
And
The City of Wichita**

Purpose: The implementation of certain practices in the watershed above Cheney Reservoir has positive impacts on the quality of the water in the North Fork of the Ninnescah River which enters Cheney Reservoir. It is the intent of this agreement to provide 100% cost share reimbursement, within the county average costs, to producers within the watershed who install such beneficial practices, and to establish the procedure by which payments to those producers will be processed. Under the Water Resources Cost Share Program (WRCS) and the Non-Point Source Pollution Control Fund (NPS) the producer will implement or install eligible improvements, and then apply for reimbursement for the cost of implementing those improvements. Under this program the producer is eligible to receive state reimbursement up to 70% of the cost. The intention of this agreement is to facilitate a means whereby the producer could receive 100% reimbursement by having the City of Wichita provide up to a 30% cost share payment for the improvements. This MOU will cover cost share practices installed under the FY 2011 program year beginning July 1, 2010 through June 30, 2011.

Reno County Conservation District Responsibilities:

The District:

1. Will maintain official records relative to farms and determine the producer's eligibility to participate in Water Resources Cost Share (WRCS) and Non-Point Source Pollution Control Fund (NPS) and other official records.
2. Will be responsible for maintaining County Average Costs. County Average Costs will be the basis for determining if the practices instituted by the producer were done in a cost effective manner. Expenses incurred by the producer above the County Average Cost will not be eligible for reimbursement.
3. Will provide to the City a breakdown of the units (acres, lineal feet, etc.) performed which will include a copy of the CS4 form showing:
 - a. Best Management Practice (BMP) applied.
 - b. Total of the units applied or completed.
 - c. The County Conservation District County Average Cost for the BMP.
 - d. Dollar amount eligible for cost-share.
 - e. Dollar amount paid by cost-share fund.
4. Will administer the cost share amount to the producer for WRCS and NPS funds.
 - a. The maximum WRCS cost share to a single Reno County producer in a fiscal year is limited to \$5,000. The maximum NPS cost share to a single Reno County producer is limited to \$7,500 for livestock waste systems or \$2,000 for household waste systems per fiscal year. The amount is calculated on the county Average Cost or actual cost for the practice applied, whichever is less. The total amount of cost share funds available in Reno County for FY2011 will be \$30,207 for WRCS and \$33,706 for the NPS Program.
 - b. The maximum WRCS cost share to a single Stafford County producer in a fiscal year is limited to \$10,000. The maximum NPS cost share to a single Stafford County producer is limited to \$5,000 per fiscal year. The amount is calculated on the county Average Cost or actual cost for the practice applied,

whichever is less. The total amount of cost share funds available in Stafford County for FY2011 will be \$22,983 for WRCS and \$24,085 for NPS.

c. The maximum WRCS cost share to a single Pratt County producer in a fiscal year is limited to \$4,000. The maximum NPS cost share to a single Pratt County producer is limited to \$3,000 per fiscal year. The amount is calculated on the county Average Cost or actual cost for the practice applied, whichever is less. The total amount of cost share funds available in Pratt County for FY2011 will be \$29,615 for WRCS and \$19,527 for the NPS Program.

d. The maximum WRCS cost share to a single Kingman County producer in a fiscal year is limited to \$3,500. The maximum NPS cost share to a single Kingman County producer is limited to \$10,000 for livestock waste systems or \$3,000 for household waste systems per fiscal year. The amount is calculated on the county Average Cost or actual cost for the practice applied, whichever is less. The total amount of cost share funds available in Kingman County for FY2011 will be \$17,281 for WRCS and \$16,936 for the NPS Program.

5. Will calculate the balance of the cost share to the producer to equal 100% of the County Average Cost. This amount will be calculated as 30% of the County Average Cost, or actual cost whichever amount is less.

6. Will provide the City of Wichita the name, address and Social Security number of the producer receiving payment, the type of practice implemented and legal site description of the improvement.

City of Wichita Responsibilities:

The City:

1. Will maintain official records relative to the cost-share program.
2. Will process payment requests upon receipt of the paperwork from the Reno County Conservation District and send payment to the producer as soon as possible within workload requirements. This payment will provide the balance of the cost share to the producer up to 100% of the County Average Cost. This amount will be calculated as 30% of the County Average Cost or actual cost, whichever amount is less. Total costs to the City of Wichita shall not exceed \$37,307 for FY 2011 WRCS and \$27,735 for FY 2011 NPS Program.
3. Will provide an accounting of the program at the request of the Reno County Conservation District.

Both Parties:

1. This agreement can be modified with consent of both parties.
2. This agreement can be terminated with 60 days written notice of either party.

Mason Kribbie
Reno County Conservation District

City of Wichita

Oct 12 -10
Date

Date
The above instrument appeared on to form
this 14th day of December, 2010
Jerry E. Leberby, Jr.
163 City Attorney

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Supplemental Design Agreement for a Multi-Use Path along I-135 to K-96
(McAdams Park to Grove Park) (Districts I & VI)

INITIATED BY: Department of Public Works

AGENDA: Consent

.....

Recommendation: Approve Supplemental Agreement No. 3.

Background: On July 1, 2008, the City Council approved funding to design a multi-use path along the I-135 Freeway to connect McAdams Park and Grove Park. On October 28, 2008, the City Council approved a design agreement with Ruggles & Bohm (R&B). The fee was \$95,000. On March 10, 2009, the City Council approved Supplemental Agreement No. 1 with R&B to advance the plan completion date to qualify for American Recover and Reinvestment Act (ARRA) funding. The fee was \$9,500. The project was submitted in March 2009 for ARRA Transportation Enhancement funding but was not selected. The project was then submitted for and preliminarily awarded an Energy Efficiency and Conservation Block Grant (EECBG). On December 8, 2009, the City Council approved a change in the original design concept, reflecting the route that was submitted for the Grant. On January 12, 2010, the City Council approved Supplemental Agreement No. 2 with R&B for revisions to the design concept. The full project design fee for Supplemental No. 2 was \$67,500, bringing the total design contract to \$172,000.

Analysis: The original proposed routing through the Clear Channel property, between 18th and 19th Streets, needs to be modified per the property owner's request. The proposed new route will pass through City property near 18th Street, and stay to the west side of the Clear Channel property approaching 19th Street. Redesign work will include plan modifications and development of tract maps and legal descriptions for the proposed right-of-way and temporary construction easement.

Supplemental No. 3 has been prepared to authorize the additional design services.

Financial Considerations: The fee for Supplemental Agreement No. 3 is \$12,823.50. Ruggles & Bohm's total fee will be \$184,823.50. The funding source is the EECBG grant, within the revised budget approved by the Council on December 8, 2009.

Goal Impact: This project addresses the Efficient Infrastructure goal by constructing a multi-use path for bike riders and pedestrians.

Legal Considerations: Supplemental Agreement No. 3 has been approved as to form by the Law Department.

Recommendation/Action: It is recommended that the City Council approve Supplemental Agreement No. 3 and authorize the necessary signatures.

Attachments: Supplemental Agreement No. 3.

SUPPLEMENTAL AGREEMENT NO. 3
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES DATED OCTOBER 28, 2008
BETWEEN
THE CITY OF WICHITA, KANSAS
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE
"CITY"
AND
RUGGLES & BOHM, P.A.
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated October 28, 2008) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the construction of improvements for a **BIKE PATH ALONG I-135 TO K-96** (Project No. 472 84740, OCA No. 706982).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

Bike Path Rerouted
(modifying the route to the far west edge of Clear Channel property)

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement shall be made on the basis of the lump sum fee specified below:

706982

\$12,823.50

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2011

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

RUGGLES & BOHM, P.A.

(Name & Title)

ATTEST:

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Supplemental Agreement for Design Services for improvements to the Big Slough South (south of 47th Street South, west of I-135 Freeway) (District III)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the supplemental agreement.

Background: On July 13, 2010, the City entered into an agreement with Professional Engineering Consultants (PEC) to design drainage improvements at the Big Slough South at the Kansas Turnpike. The fee was \$129,420. The improvement will replace and expand a box culvert under the Kansas Turnpike. The project will provide flood protection for existing neighborhoods in the area, with an estimated 150 houses removed from the floodplain post construction. The larger structure will also aid in the development of a large, vacant commercial tract upstream of the culvert.

Analysis: Additional FEMA mapping work is required of the consultant and the developer that was not expected when the project was initiated. This will insure that the residential properties are properly removed from the floodplain upon completion of the project. The fee for the supplemental agreement is \$25,353.

Financial Considerations: PEC's total fee including the supplemental agreement will be \$154,773, with 80% paid by General Obligation bonds and 20% by special assessments to the Southfork development.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing drainage improvements for a new commercial development and an existing residential area.

Legal Considerations: The Department of Law has approved the supplemental agreement as to legal form.

Recommendations/Actions: It is recommended that the City Council approve the supplemental agreement and authorize the necessary signatures.

Attachments: Supplemental Agreement.

SUPPLEMENTAL AGREEMENT
TO THE
AGREEMENT FOR PROFESSIONAL SERVICES DATED JULY 13, 2010
BETWEEN
THE CITY OF WICHITA, KANSAS
PARTY OF THE FIRST PART, HEREINAFTER CALLED THE
"CITY"
AND
PROFESSIONAL ENGINEERING CONSULTANTS, P.A.
PARTY OF THE SECOND PART, HEREINAFTER CALLED THE
"ENGINEER"

WITNESSETH:

WHEREAS, there now exists a Contract (dated July 13, 2010) between the two parties covering engineering services to be provided by the ENGINEER in conjunction with the **DRAINAGE IMPROVEMENTS OF BIG SLOUGH SOUTH (RIVERSIDE DRAINAGE) AT THE KANSAS TURNPIKE** (Storm Water Drain No. 361) (Project No. 468 84636).

WHEREAS, Paragraph IV. B. of the above referenced Contract provides that additional work be performed and additional compensation be paid on the basis of a Supplemental Agreement duly entered into by the parties, and

WHEREAS, it is the desire of both parties that the ENGINEER provide additional services required for the PROJECT and receive additional compensation (as revised herein):

NOW THEREFORE, the parties hereto mutually agree as follows:

A. PROJECT DESCRIPTION

The description of the improvements that the CITY intends to construct and thereafter called the "PROJECT" as stated on page 1 of the above referenced agreement is hereby amended to include the following:

Additional Scope of Services
(see Exhibit "C")

B. PAYMENT PROVISIONS

The lump sum fee and the accumulated partial payment limits in Section IV. A. shall be amended as follows:

Payment to the ENGINEER for the performance of the professional services as outlined in this supplemental agreement will increase the total contract by \$25,353.00.

C. PROVISIONS OF THE ORIGINAL CONTRACT

The parties hereunto mutually agree that all provisions and requirements of the existing Contract, not specifically modified by this Supplemental Agreement, shall remain in force and effect.

IN WITNESS WHEREOF, the CITY and the ENGINEER have executed this Supplemental Agreement as of this _____ day of _____, 2010.

BY ACTION OF THE CITY COUNCIL

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary Rebenstorf, Director of Law

PROFESSIONAL ENGINEERING CONSULTANTS, P.A.

ATTEST:

SCOPE OF SERVICES (additional)
for
DRAINAGE IMPROVEMENTS OF BIG SLOUGH SOUTH
(RIVERSIDE DRAINAGE) AT THE KANSAS TURNPIKE
(Storm Water Drain No. 361)
Project No. 468 84636

1. Flood study analysis to determine flood plain limits based upon proposed structure.
2. Downstream analysis and effects of increased capacity of proposed structure.
3. Determination of public benefits.
4. Estimation of size and cost of replacement structure.
5. Attendance of public meetings, meetings/discussions with Riverside Drainage District (RDD), and meetings/discussions with KTA of proposed structure.
6. Drafting and coordination of Interlocal Agreement between KTA, CITY and the RDD.
7. Drafting and coordination of easement agreement between RDD and CITY.
8. Preparation of exhibits for meetings.

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 1: Nomar International Market
(District VI)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

.....

Recommendation: Approve Change Order No. 1.

Background: On November 3, 2009, the City Council approved a construction contract with Walz Harman Huffman Construction, Inc. to build the Nomar International Market. A number of work items were identified after the project was let that should be addressed as a change order.

Analysis: The additional work items include staining concrete panels, additional lighting, a roof ladder and steel scrolls at porch posts. Also, an abandoned concrete footing was uncovered under the old parking lot that needed to be removed. The majority of the items in the change order are add alternates that were in the original bid. The remaining items are extra work that needed to be performed in order to address changed site conditions. An itemized list of the work items is included in the attached change order document.

Financial Considerations: The total cost of the additional work is \$31,360 with the total paid by General Obligation bonds. The original contract amount is \$598,900. This change order represents 5.24% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: This project addresses the Quality of Life goal by providing a cultural facility for the community.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 10% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve the change order and authorize the necessary signatures.

Attachments: Change Order No. 1.



[DATE]

PUBLIC WORKS – BUILDING SERVICES DIVISION

CHANGE ORDER

To: Walz Harman Huffman Construction, Inc.
5615 E. Huffman Dr.
Kechi, KS 67067

Project: Nomar International Market
Construction – FB 930201

Change Order No.: One (1)
Purchase Order No.: 930909
CHARGE TO OCA No.: 792523

Project No.: N/A
OCA No.: 792523
PPN: 435455

Please perform the following extra work at a cost not to exceed \$31,360.00

Additional Work:

1. Staining of concrete patterns.....\$10,542.00
2. Install Niche Up-Lights.....\$7,182.00
3. Install roof scuttle and ladder.....\$1,500.00
4. Install colored roof tile at high tower.....\$1,100.00
5. Omit specified steel scroll at porch posts.....(\$245.00)
6. Install new steel scrolls at porch posts.....\$1,611.00
7. Install fire extinguisher at hallway.....\$280.00
8. Remove residual concrete footing at the
parking lot and cart away.....\$1,725.00
9. Omit specified Bradley Hand Dryers.....(\$525.00)
10. Install Bradley World Hand Dryers.....\$873.00
11. Omit section of planter.....(\$703.00)
12. Add 4 feet of fence.....\$484.00
13. Provide electric conduits to future Light Pole locations.....\$981.00
14. Haul decorative bricks from Public works depot to site.....\$507.00
15. Mount finials including all necessary brackets.....\$3,207.00
16. Supply customized “N” and “O” letters in the NOMAR logo.....\$400.00
17. Construct tile inlets at columns.....\$927.00
18. Install grilles at restroom ceilings.....\$474.00
19. Install electric
receptacle for irrigation controller.....\$112.00
20. Leave temporary security fence around building and around the
Gateway Tower location for an extra 3 months.....\$928.00

TOTAL..... \$31,360.00

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
1. Staining of concrete patterns	Bid	1	\$10,542.00	\$10,542.00

Reason for Additional Work..... Executed bid Add Alternate #6

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
2. Install Niche Up-Lights	Bid	1	\$7,182.00	\$7,182.00

Reason for Additional Work..... Executed bid Add Alternate #10

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
3. Install roof scuttle and ladder	Bid	LS	\$1,500.00	\$1,500.00

Reason for Additional Work..... Executed bid Add Alternate #7

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
4. Install colored roof tile at high tower	Bid	LS	\$1,100.00	\$1,100.00

Reason for Additional Work..... Executed bid Add Alternate #13

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
5. Omit specified steel scroll at porch posts	Negot'd	20	(\$12.25)	(\$245.00)

Reason for Omission.....Scrolls discovered to be too small

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
6. Install new steel scrolls at porch posts	Negot'd	20	\$80.55	\$1,611.00

Reason for Additional Work.....Larger scrolls better fit for porch posts

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
7. Install fire extinguisher at hallway	Negot'd	1	\$280.00	\$280.00

Reason for Additional Work..... OCI requested during final inspection

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
8. Remove residual concrete footing at parking lot and cart away	Negot'd	LS	\$1,725.00	\$1,725.00

Reason for Additional Work..... Abandoned concrete footings discovered under old parking lot

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
9. Omit specified Bradley Hand Dryers	Negot'd	2	(\$262.50)	(\$525.00)

Reason for Omission..... Requested by PW Maintenance – inferior quality

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
10. Install Bradley World Hand Dryers	Negot'd	2	\$436.50	\$873.00

Reason for Additional Work..... Requested by PW Maintenance – superior quality

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
11. Omit section of planter	Negot'd	LS	(\$703.00)	(\$703.00)

Reason for Omission..... Protruding onto the sidewalk

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
12. Install 4' of perimeter fence	Negot'd	LS	\$484.00	\$484.00

Reason for Additional Work..... Discrepancy in dimensions on the drawing

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
13. Provide electrical conduits to future light pole locations	Negot'd	LS	\$981.00.00	\$981.00

Reason for Additional Work..... To cater for future market needs

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
14. Haul decorative bricks from Public Works depot to site	Negot'd	LS	\$507.00	\$507.00

Reason for Additional Work..... Mistakenly omitted from original contract

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
15. Mount finials including all necessary Brackets	Negot'd	LS	\$3,207.00	\$3,207.00

Reason for Additional Work..... After manufacture, the Art piece ceramic finials weight was much greater than anticipated leading to changes in structural mounting specifications and detailing

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
16. Supply customized “N” and “O” letters in the NOMAR logo	Negot'd	2	\$200.00	\$400.00

Reason for Additional Work..... Both letters patented therefore requiring customization

<u>Item</u>	<u>Negot'd/Bid</u>	<u>Qty</u>	<u>Unit Price</u>	<u>Extension</u>
17. Construct art tile inlets at columns	Negot'd	LS	927.00	\$927.00

Reason for Additional Work..... Artist donated decorative tiles hence need for this space

Item	Negot'd/Bid	Qty	Unit Price	Extension
18. Install grilles at restroom ceilings	Negot'd	LS	\$474.00	\$474.00

Reason for Additional Work..... OCI requested during final inspection

Item	Negot'd/Bid	Qty	Unit Price	Extension
19. Install electric receptacle for irrigation Control	Negot'd	LS	\$112.00	\$112.00

Reason for Additional Work..... Mistakenly omitted from original contract

Item	Negot'd/Bid	Qty	Unit Price	Extension
20. Leave temporary security fence around building and around the Gateway Tower location for an extra 3 months	Negot'd	LS	\$928.00	\$928.00

Reason for Additional Work..... For protection of building and Plaza during street construction

TOTAL..... \$31,360.00

CIP Budget Amount: \$761,888.00 Original Contract Amt.: \$598,900.00

Consultant: LawKingdon Architects
Exp. & Encum. To Date: \$695,004.18

CO Amount: \$31,360.00
Unencum. Bal. After CO: \$35,523.82

Current CO Amt.: \$31,360.00
Amt. of Previous CO's: \$0
Total of All CO's: \$31,360.00
% of Orig. Contract / 10% Max.: 5.24%
Adjusted Contract Amt.: \$630,260.00

Recommended By:

Migwi Karugu
Project Manager

Date

Approved:

Contractor

Date

Approved as to Form:

Gary Rebenstorf
Director of Law

Date

Approved:

Ed Martin
Building Services Manager

Date

Approved:

James Armour
Ag Director of Public Works

Date

By Order of the City Council:

Carl Brewer
Mayor

Date

Attest:

City Clerk

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Change Order No. 3: Paving and Drainage Improvements in Cedar View Village Addition (east of Greenwich, south of Kellogg) (District II)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

.....

Recommendation: Approve Change Order No. 3.

Background: On October 7, 2008, the City Council approved a construction contract with APAC-Kansas Inc., Shears Division to construct streets and drainage improvements in Cedar View Village Addition. After the contract was awarded, the developer changed the planned street alignments which resulted in the relocation of private gas and electric lines and delayed the completion of the project for fourteen months. The project delay caused a number of additional work items that should be addressed by change order.

Analysis: A storm water detention pond and utility easements have eroded and need to be re-graded. A turf reinforcement mat should be installed to line the pond and mitigate future erosion. A storm sewer manhole and fire hydrant need to be adjusted, and 122 feet of sidewalk removed and replaced to comply with the Americans with Disabilities Act. An itemized list of the work is included in the attached change order document.

Financial Considerations: The total cost of the additional work is \$18,861 with the total paid by special assessments. The original contract amount is \$269,768. This change order plus previous change orders represents 10% of the original contract amount. Funding is available within the existing project budget.

Goal Impact: This project addresses the Efficient Infrastructure goal by paving streets and constructing drainage improvements in a new residential subdivision.

Legal Considerations: The Law Department has approved the change order as to legal form. The change order amount is within the 25% of construction contract cost limit set by City Council policy.

Recommendation/Action: It is recommended that the City Council approve Change Order No. 3 and authorize the necessary signatures.

Attachments: Change Order No. 3.



PUBLIC WORKS-ENGINEERING

November 24, 2010
CHANGE ORDER**To:** APAC- Kansas, Inc., Shears Division**Project:** SWD #343, tied w/ SWS #640 tied w/Bristol Circle paving to serve Cedar View Village Addition (east of Greenwich, south of Kellogg)**Change Order No.:** 3**Project No.:** 468-84463/468-84464/472-84637**Purchase Order No.:** 801195**OCA No.:** (751474)/(751473)/(766210)**CHARGE TO OCA No.:** 751473 = \$12,001.50
766210 = \$6,859.00**PPN:** 485365/485364/490228**Please perform the following extra work at a cost not to exceed \$18,860.50**

Additional Work: This subdivision was re-platted and the alignment of the street changed after utilities were installed. The utility relocation took 14 months to complete. The contractor needed to re-grade eroded areas upon remobilization to the project. Remove and Replace 122' of sidewalk to meet ADA Compliance. Adjust a SWS Manhole and fire hydrant. Install erosion matt around pond to prevent further erosion. All costs for the changes will be charged to the development.

Reason for Additional Work:

Item #1 – Due to a 14 month delay in the project, the contractor is to rework the pond due to erosion, re-grade utility easements due to utility relocates, and touch up any lots or easements where erosion has occurred.

Item	Negot'd/Bid	Qty		Unit Price	Extension
Charge to OCA (751473) - ADD					
Re-grading	Negot'd	1 LS @		7402.50 =	\$7,402.50

Item #2 – To meet ADA compliance with the revised grades, the contractor is to remove and replace 122' of existing sidewalk at the entrance to Cedar View Village.

Item	Negot'd/Bid	Qty		Unit Price	Extension
Charge to OCA (766210) - OVERRUN					
Sidewalk Concrete (4")	Bid	122 lf @		8.00 =	\$976.00
Concrete Sidewalk Removed	Bid	122 lf @		1.50 =	\$183.00

Item #3 – A Storm Sewer MH @ station 10+55 LT needs to be adjusted up 1' to get positive drainage. A fire hydrant @ station 21+54.99 RT needs to be adjusted up 1.5' to get it above the back of the new curb.

Item	Negot'd/Bid	Qty		Unit Price	Extension
Charge to OCA (766210) - ADD					
Adjust MH/FH	Negot'd	1 LS @		2,200.00 =	\$2,200.00

Item #4 – The pond had major erosion due to the adjacent field and parking lot draining into it. The contractor is to install 639 SY of Permanent Turf Reinforcement Mat at various locations around the pond.

Item	Negot'd/Bid	Qty		Unit Price	Extension
Charge to OCA (751473) - ADD					
Erosion Mat	Negot'd	1 LS @		4,599.00 =	\$4,599.00

Item #5 – Cracks were found in the existing asphalt pavement. Five cracks, each approximately 1" wide and 20' long, were milled out and replaced with new asphalt.

Item	Negot'd/Bid	Qty		Unit Price	Extension
Charge to OCA (766210) - ADD					
Crack Repair	Negot'd	1 LS @		3,500.00 =	\$3,500.00

Total = \$18,860.50

CIP Budget Amount: \$58,000.00 (751474);
\$183,000.00 (751473); \$226,600.00 (766210)
Consultant: MKEC

Total Exp. & Encum. To Date: \$107,948.66 (751473)
\$174,290.57 (766210)

CO Amount: \$18,860.50
Unencum. Bal. After CO: \$63,049.84 (751473)
\$45,450.43 (766210)

Original Contract Amt.: \$269,768.01

Current CO Amt.: \$18,860.50
Amt. of Previous CO's: \$7,578.75
Total of All CO's: \$26,439.25
% of Orig. Contract / 25% Max.: 10%
Adjusted Contract Amt.: \$296,207.26

Recommended By:

Greg Baalman, P.E. Date
Construction Engineer

Approved:

Jim Armour, P.E. Date
City Engineer
Co-Director, Public Works & Utilities

Approved:

Contractor Date

By Order of the City Council:

Carl Brewer Date
Mayor

Approved as to Form:

Gary Rebenstorf Date
Director of Law

Attest: _____
City Clerk

CITY OF WICHITA
City Council Meeting
January 4, 2011

TO: Mayor and City Council Members

SUBJECT: Exchange of Property Along Union Pacific Rail Corridor for the Heartland Preparedness Center Project (District I)

INITIATED BY: Office of Property Management

AGENDA: Consent

Recommendation: Approve the exchange.

Background: The City of Wichita and Sedgwick County have entered into an agreement with the Federal government to develop a centralized facility for National Guard and Army Reserve use. The site is located on City owned land east of I-135 and south of the Union Pacific railroad rail line. The City's commitment to the project includes development of access to the site, along with a variety of other infrastructure improvements. As part of the project, sufficient access must be provided to the site. After reviewing several alternatives, it was determined that the safest and most efficient method would be to develop a road along the south side of the railroad right of way from Hillside to the proposed site. This access can be easily controlled, does not impact the adjoining neighborhood and does not require crossing the rail corridor.

Analysis: Development of this access will require the acquisition of five parcels from three owners. Four of the parcels have been acquired. This is the final tract needed for the project. It consists of the south 25 feet of the Union Pacific Railroad corridor from Hillside to approximately 2,455 feet west of Hillside. The described parcel contains 1.389 acres and is undeveloped. The railroad has agreed to grant the City an easement for this land in exchange for a strip of City owned land immediately west of Grove Street and north of the rail corridor. The City parcel is also 25 feet wide and undeveloped. It is 1.402 acres in size.

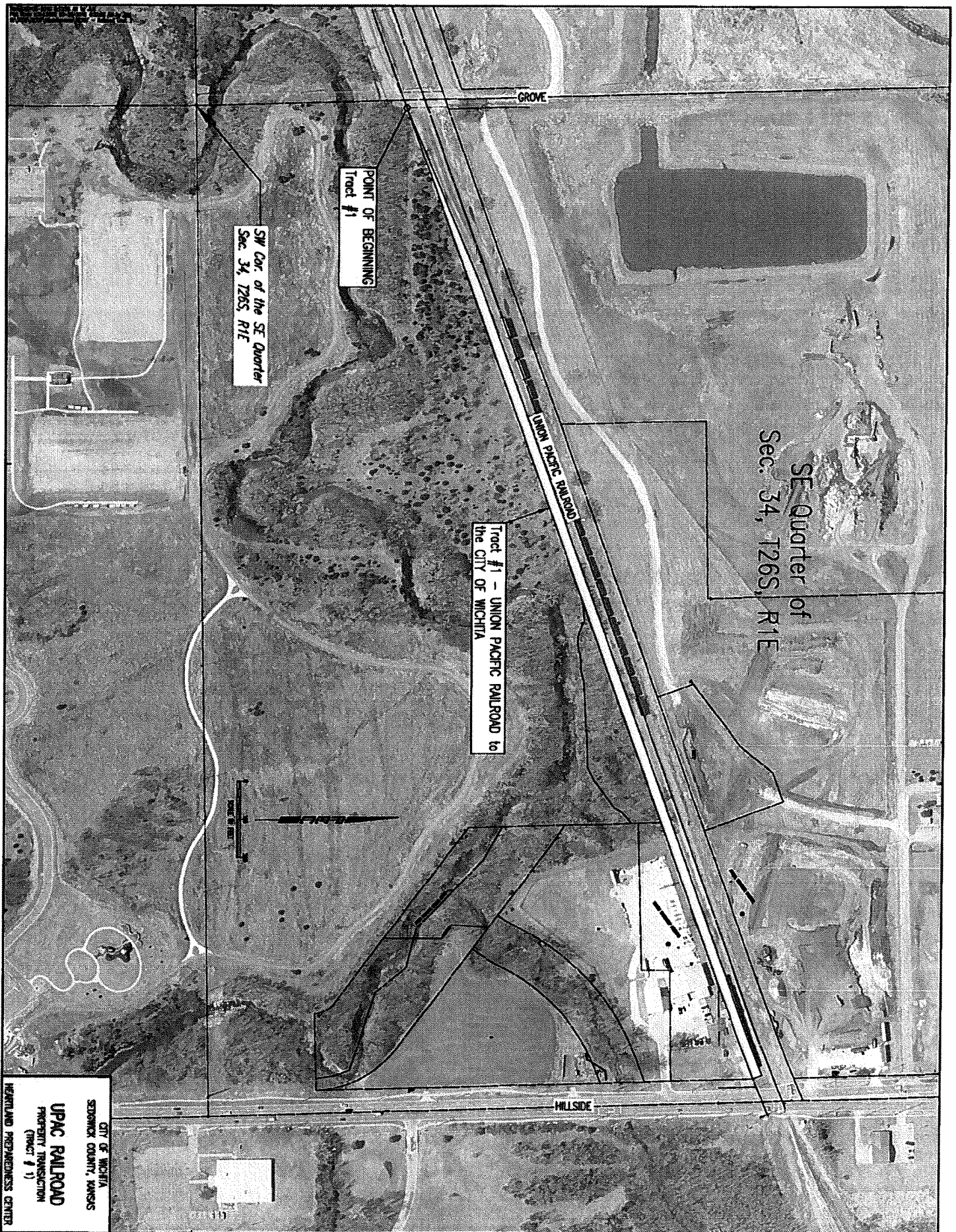
Financial Considerations: The funding source for the project is General Obligation Bonds. There is no cost for the acquisition, however; a budget of \$ 5,000 is requested for closing costs, title insurance and administrative fees.

Goal Impact: The acquisition of this parcel is necessary to ensure Efficient Infrastructure by improving access to the proposed facility.

Legal Considerations: The Law Department has approved the contract as to form.

Recommendations/Actions: It is recommended that the City Council; 1) Approve the Budget; 2) Approve the Easement Exchange Agreement and 3) Authorize the necessary signatures.

Attachments: Aerial maps and easement exchange agreement.



SE Quarter of
Sec. 34, T26S, R1E

GROVE

POINT OF BEGINNING
Tract #1

SW Cor. of the SE Quarter
Sec. 34, T26S, R1E

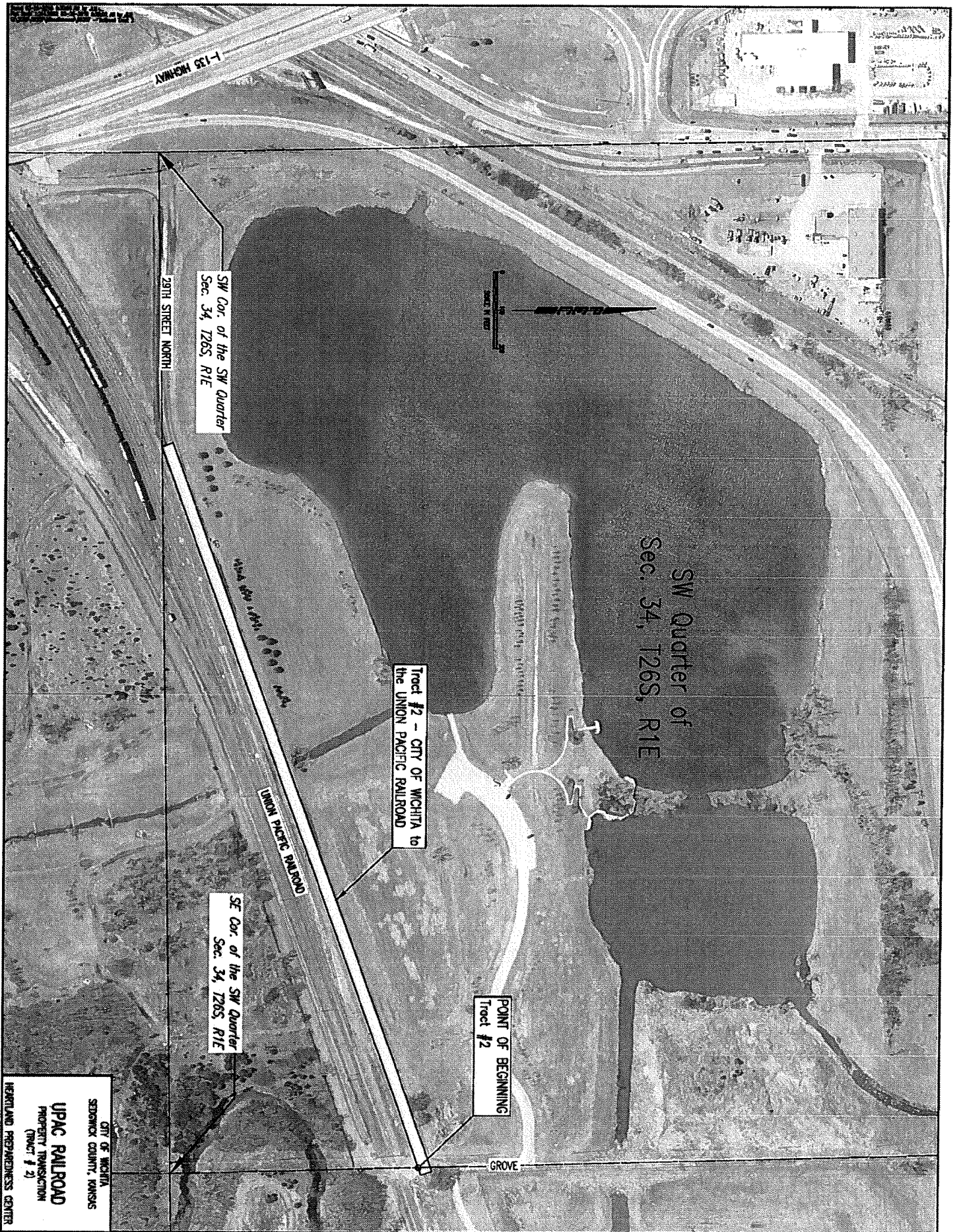
Tract #1 - UNION PACIFIC RAILROAD to
the CITY OF WICHITA

UNION PACIFIC RAILROAD

HILLSIDE

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CITY OF WICHITA
SEDWICK COUNTY, KANSAS
UPAC RAILROAD
PROPERTY TRANSACTION
(Tract # 1)
HEARTLAND PROGRESS CENTER



EASEMENT EXCHANGE AGREEMENT

THIS EASEMENT EXCHANGE AGREEMENT ("Agreement") is entered into _____, 2011 ("Effective Date"), between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation, whose address is 1400 Douglas Street, Omaha, Nebraska 68179 ("UPRR"), and **CITY OF WICHITA**, a municipal corporation of the State of Kansas, whose address is 455 North Main, Wichita, Kansas 67202 ("City"). UPRR and City are sometimes collectively referred to as the "Acquiring Parties" and individually as an "Acquiring Party".

RECITALS:

A. UPRR owns the real property in Wichita, Sedgwick County, Kansas, shown in yellow on the print attached hereto as **Exhibit A** ("UPRR Property").

B. City owns the real property in Wichita, Sedgwick County, Kansas, shown in yellow on the print attached hereto as **Exhibit B** ("City Property"). The UPRR Property and the City Property are sometimes referred to as the "Easement Exchange Properties" and individually as an "Easement Exchange Property".

C. UPRR and City wish to exchange easements (sometimes referred to as the "Easement Exchange") in the UPRR Property and the City Property as provided in this Agreement, to have the City close the Grove Street railroad crossing described on **Exhibit F**, and to vacate such railroad crossing area and that portion of the City Property lying in Grove Street that will be included in the Easement Exchange.

D. UPRR and City acknowledge that City has as of the Effective Date closed the Grove Street railroad crossing.

AGREEMENT:

Section 1. Exchange.

UPRR agrees to grant to City a non-exclusive perpetual easement over, across and upon the UPRR Property for the construction, use, maintenance, repair, renewal and reconstruction of a private roadway for the benefit of the Kansas National Guard. City agrees to grant to UPRR an exclusive perpetual easement over, across, under and upon the City Property for the construction, use, operation, maintenance, repair, renewal and reconstruction of railroad tracks and appurtenances thereto. The grant of easements in and to the UPRR Property and the City Property will be for and in consideration of each other, upon the terms and conditions in this Agreement, except that City, in addition to such grant of easement to UPRR, shall vacate the portion of Grove Street lying within the railroad crossing area described on **Exhibit F** and that portion of the City Property lying in Grove Street that is included in the Easement Exchange as set forth in Section 2(e) below. In connection with the vacation of Grove Street in the railroad crossing area, the at-grade crossing of the railroad tracks shall be permanently closed and UPRR

shall be entitled to remove any surface crossing materials at that location. The parties agree that the easements over the UPRR Property and the City Property have equal fair market values.

Section 2. Conditions Precedent to Exchange.

(a) Title Review. Within sixty (60) days after the Effective Date, City, at its cost and expense, shall obtain from Security 1st Title LLC, 434 North Main Street, Wichita, Kansas 67202 ("Title Company"), preliminary title reports on the Easement Exchange Properties ("Title Reports"), and furnish same to UPRR. City and UPRR each will have thirty (30) days after receipt of the Title Report to the Easement Exchange Property being acquired (City with respect to the UPRR Property; UPRR with respect to the City Property) in which to approve or disapprove any defects in the title or any liens, encumbrances, covenants, rights of way, easements or other outstanding rights disclosed by such Title Report. Disapproval must be by written notice given by the Acquiring Party to the other party setting forth the specific item or items disapproved. If no such notice of disapproval is given by the Acquiring Party within the thirty (30) day period, it will be conclusively presumed that the Acquiring Party approves of the Title Report to the Easement Exchange Property being acquired. If the Acquiring Party disapproves of any item or items contained in or disclosed by the Title Report to the Exchange Property being acquired, the other party will have thirty (30) days after receipt of the Acquiring Party's notice of disapproval to eliminate any disapproved items from the policy of title insurance to be issued in favor of the Acquiring Party, provided such other party shall not be required to eliminate any such disapproved items. If any such disapproved item is not eliminated within such thirty (30) day time period, then this Agreement will terminate unless the Acquiring Party elects to waive its prior disapproval in writing at least five (5) days before Closing. In the event of termination due to any such uncorrected defect in title, this Agreement will terminate and be without any further force and effect, and without further obligation of either party to the other.

(b) Surveys. Within sixty (60) days after the Effective Date, City, at its sole cost and expense, shall obtain ALTA surveys of the Easement Exchange Properties, performed by a registered surveyor of the State of Kansas in accordance with Kansas Land Survey Standards and in a form acceptable to Title Company for all purposes (collectively the "Surveys" and individually a "Survey"). The Survey of each Easement Exchange Property, as approved by the Acquiring Party acquiring an easement interest in such Easement Exchange Property as set forth in subparagraph (a) above, will be used by UPRR as the basis for preparation of the metes and bounds descriptions of the Easement Exchange Properties.

(c) Phase I Environmental Assessments. Upon execution of this Agreement, City, and its agents and contractors, are granted the privilege for a period of sixty (60) days after the Effective Date ("Environmental Review Period") of entering upon the Easement Exchange Properties for the purpose of performing Phase I environmental assessments (the "Phase I Assessments") of each Easement Exchange Property and providing UPRR with copies of such Phase I Assessments. If the results of such Phase I Assessment for the Easement Exchange Property being acquired by UPRR or City are unsatisfactory in UPRR or City's opinion, an Acquiring Party may, at its election, terminate this Agreement by giving the other party written notice of termination within thirty (30) days after receipt of the Phase I Assessments. If no such

written notice of termination is given by one party to the other before expiration of such thirty (30) day time period, the Easement Exchange Property being acquired will be deemed suitable for the Acquiring Party's purposes. If any of the Phase I Assessments recommend physical testing of any portion of the Easement Exchange Properties or identifies a recognized environmental condition with respect to any portion of the Easement Exchange Properties, then either party shall have the right to conduct environmental sampling. The parties shall (i) before conducting any sampling, provide the other party with the testing party's work plan for sampling and shall modify the work plan as reasonably requested by the other party, (ii) give the other party reasonable advance notice of the dates when sampling will be conducted so that the other party and/or its consultants have the opportunity to be present, (iii) conduct any sampling in accordance with the work plan referred to under (i) above and with generally accepted environmental engineering standards, and (iv) provide the other party with the draft report on such sampling for the other party's review and comments prior to the report being placed in final form, and give reasonable consideration to such comments. In the event of termination by an Acquiring Party, then this Agreement will terminate and be without any further force and effect and without further obligation of either party to the other.

(d) Entry on Easement Exchange Properties. Any entry by a party on the Easement Exchange Property of the other party under subparagraph (c) above (the "testing party") is subject to the following terms and conditions:

(i) The testing party agrees, to the extent it may lawfully do so, to indemnify and save harmless the other party, its officers, agents, servants and employees, against and from any and all liability, loss, costs and expense of whatsoever nature growing out of personal injury to or death of persons whomsoever, or loss or destruction of or damage to property whatsoever, where such personal injury, death, loss, destruction or damage arises in connection with or incident to the occupation or use of the Easement Exchange Property by, or the presence thereon of the testing party, its employees, agents or contractors, before Closing;

(ii) The testing party covenants and agrees to pay in full for all materials joined or affixed to the Easement Exchange Property on account of the testing party, and to pay in full all persons who perform labor upon the Easement Exchange Property being tested, and not to permit or suffer any mechanic's or materialman's lien of any kind or nature to be enforced against the Easement Exchange Property being tested for any work done or materials furnished at the instance or request or on behalf of the testing party; and the testing party agrees, to the extent it may lawfully do so, to indemnify and hold harmless the other party against and from any and all liens, claims, demands, costs and expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed or materials furnished before Closing;

(iii) If this Agreement is terminated, the testing party shall, as soon as possible and at the testing party's sole expense, restore the Easement Exchange Property to the same condition it was in immediately prior to the time the testing party entered the Easement Exchange Property being tested, failing in which the other party may perform the work of restoration and the testing party shall reimburse the other party for the cost

and expense of restoration within thirty (30) days after rendition of a bill by the other party; and

(iv) Notwithstanding any provisions in this Agreement to the contrary, in the event this Agreement is terminated for any reason whatsoever, UPRR and City nevertheless will be obligated to comply with the provisions of this Section 2(d).

(e) Vacation of Grove Street. On or before Closing, City, at its sole cost and expense, shall vacate the portion of Grove Street lying within the railroad crossing area and the portion of the City Property lying in Grove Street that will be included in the Easement Exchange.

(f) B & B Service Co. Lease. The UPRR Property is subject to that certain Lease of Property dated March 3, 1987 between Missouri Pacific Railroad Company (predecessor in interest to UPRR) and B & B Service Co., Inc. ("Tenant"), as supplemented and amended by Supplement to Lease Agreement dated May 15, 2000, identified in the records of UPRR as Lease Audit No. LA33787 (collectively, the "Lease"). On or before Closing, City, at its sole cost and expense, shall use commercially reasonable efforts to negotiate a buy-out of the Lease with the Tenant so that at Closing UPRR may terminate the Lease. If City fails to negotiate a buy-out of the Lease on or before Closing, then at Closing the easement to be granted by UPRR to City shall be subject to the Lease and City's obligation to buy out the Tenant shall become a post-closing obligation as set forth in Section 4 below.

(g) KG&E Easement. The City Property is subject to a wireline easement in favor of KG&E filed in the public records of Sedgwick County, Kansas in Miscellaneous Book 666 at Page 329. On or before Closing, City, at its sole cost and expense, shall use commercially reasonable efforts to have the KG&E Easement modified to allow construction of all railroad structures, tracks and appurtenances pursuant to UPRR's current standards and clearances. If construction of UPRR's structures, tracks and appurtenances on the City Property require the KG&E wirelines to be moved to provide proper clearances after Closing, then such removal or replacement of the KG&E wirelines will be at the City's sole cost and expense.

Section 3. Escrow; Closing.

(a) Upon execution of this Agreement by both parties, an escrow account will be opened with Title Company. On or before the date of Closing, UPRR shall deposit with Title Company a Roadway Easement Deed and Agreement for the UPRR Property in the form marked **Exhibit C**, as executed by UPRR. City shall deposit with Title Company the Roadway Easement Deed and Agreement for the UPRR Property in the form marked **Exhibit C** and an Easement Deed for the City Property in the form marked **Exhibit D**, as executed by City. The Title Company will be instructed that when it is in a position to issue a title insurance policy insuring City's easement interest in the UPRR Property, and to issue a title insurance policy insuring UPRR's easement interest in the City Property, then Title Company shall:

- (i) record the Roadway Easement Deed and Agreement from UPRR to City and deliver the recorded deed to City;

- (ii) record the Easement Deed from City to UPRR and deliver the recorded deed to UPRR; and
 - (iii) issue and deliver to UPRR and City the applicable title insurance policy.
- (b) At Closing, City shall pay the following costs:
- (i) All escrow fees;
 - (ii) The premiums for the issuance of the title insurance policies for the UPRR Property and the City Property; and
 - (iii) The cost of recording the Roadway Easement Deed and Agreement for the UPRR Property and the Easement Deed for the City Property.

(c) Closing. The exchange of the Easement Exchange Properties will close ("Closing") through escrow at the offices of the Title Company within thirty (30) days after the end of the Environmental Review Period ("Closing Date"), unless an Acquiring Party has exercised its rights to terminate this Agreement. Closing will be pursuant to the provisions of this Agreement, and in accordance with the general provisions of the usual form of escrow agreement used by Title Company in similar transactions (with such special provisions inserted as may be required to conform with this Agreement). At Closing, each Acquiring Party shall deliver actual possession of its Easement Exchange Property to the other party.

Section 4. Post-Closing Obligations of City.

(a) Termination of Lease and Removal of Building. If City has not completed the buy-out of the Tenant and the Lease has not been terminated on or before Closing as set forth in Section 2(f), City covenants and agrees that City, at its sole cost and expense and within ninety (90) days after Closing, will continue to use commercially reasonable efforts to buy out the Lease, relocate the Tenant, including, without limitation, reimbursement of rent to Tenant (at no cost to UPRR), and demolish the Tenant's building located on the leased premises and, if encroaching on UPRR's adjacent right-of-way, on such railroad right-of-way. Entry on UPRR's adjacent right-of-way for purposes of demolition of the building shall be on the terms and conditions set forth in subparagraph (b) below.

(b) Construction of Roadway on UPRR Property. City intends to construct a roadway (the "Roadway") on the UPRR Property for the benefit of the Kansas National Guard ("KNG") for vehicular access to and from the KNG's property lying south of the UPRR Property. UPRR shall have the right to use the Roadway for access to its adjacent railroad right-of-way. The Roadway shall be constructed and completed by City in conformity with plans and specifications approved by UPRR. 100% construction plans and specifications shall be provided by City to UPRR within six (6) months after Closing and approval of such plans and specifications shall be provided by UPRR to City within thirty (30) days of receipt thereof. The Roadway must maintain positive drainage away from UPRR's railroad track. If City's plans and

specifications provide for the top of a curb elevation higher than the railroad subgrade, then City shall install an under drain system, approved by UPRR, sufficient to drain the area between the railroad tracks. City agrees to furnish all labor, materials, tools, equipment, machinery, services, supplies, transportation, facilities and other items necessary to manage, construct and complete the Roadway in accordance with such plans and specifications. If the City has to enter on or use of any of UPRR's property lying north of the UPRR Property [or within twenty-five feet (25') of the centerline of UPRR's railroad track] for construction of the Roadway or for demolition of the Tenant's building, such entry and use shall be governed by the terms and conditions of a Temporary Construction Easement Agreement in the form attached hereto as **Exhibit E** and hereby made a part hereof. "Final Completion" shall be achieved not later than January 31, 2013. "Final Completion" of the work shall be deemed to have occurred when (i) the work has been fully completed to UPRR's satisfaction in accordance with the specifications; (ii) City submits to UPRR and UPRR approves (A) final waivers and releases of liens and claims from any contractor, subcontractor, materialmen and suppliers, and (B) City's affidavit that all indebtedness connected with the work for which City may be responsible has been paid or otherwise satisfied; and (iii) all claims of lien and stop notices that may have been recorded or notice thereof served on UPRR have been paid in full and released. If City fails to achieve Final Completion on or before January 13, 2013, then, in addition to UPRR's other remedies at equity or in law, UPRR may elect to take over the work and prosecute the same to Final Completion by contract or otherwise, in which event UPRR may take possession of and utilize in completing the work such materials and equipment as may be on location and necessary to the Roadway, and in so completing construction of the Roadway, bill City therefor. If this Agreement is terminated for any reason other than default of UPRR, UPRR shall be entitled to retain any and all Roadway work at no expense to UPRR, and this Agreement shall be without any further force and effect, and without further obligation of either party to the other

(c) As part of the Roadway construction referred to in subparagraph (b) above, City shall install a swing gate and lock at Hillside Street to prevent encroachment on the Roadway by the public. City shall provide a key to the lock to UPRR at the following address:

Union Pacific Railroad Company
 Attention: Ruben D. Lopez, Superintendent Transportation Services
 2645 New York Street
 Wichita, Kansas 67219
 Telephone: (316) 268-9485
 Cell: (316) 293-6494
 E-Mail: rdlopez@up.com

The lock on the gate may not be changed unless UPRR is immediately supplied with a copy of the new key.

Section 5. As-Is; Release; Representations.

(a) As Is. Except as otherwise provided in subparagraph (d) below: (i) each easement interest in each Easement Exchange Property is to be granted to and accepted by the Acquiring Party in an "as is" condition with all faults; (ii) UPRR makes no representations or warranties of

any kind whatsoever, either express or implied, with respect to the UPRR Property; in particular, but without limitation, UPRR makes no representations or warranties with respect to the use, condition, title, occupation or management of the UPRR Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record); (iii) City makes no representations or warranties of any kind whatsoever, either express or implied, with respect to the City Property; in particular, but without limitation, City makes no representations or warranties with respect to the use, condition, title, occupation or management of the City Property, or compliance with applicable statutes, laws, codes, ordinances, regulations, requirements, covenants, conditions and restrictions (whether or not of record); and (iv) each Acquiring Party acknowledges that it is entering into this Agreement on the basis of its own investigation of the physical and environmental conditions of the Easement Exchange Property in which it is acquiring an easement interest, including the subsurface conditions, and each Acquiring Party assumes the risk that adverse physical and environmental conditions may not have been revealed by its investigation. Each Acquiring Party acknowledges that notwithstanding any prior or contemporaneous oral or written representations, statements, documents or understandings, this Agreement constitutes the entire understanding of the Acquiring Parties with respect to the exchange of the Easement Exchange Properties and supersedes any such prior or contemporaneous oral or written representations, statements, documents or understandings.

(b) Release by City. CITY, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES UPRR, AND ITS EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH CITY NOW HAS OR WHICH CITY MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF THE UPRR PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO THE UPRR PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF UPRR, ITS EMPLOYEES, AGENTS, OFFICERS, SUCCESSORS OR ASSIGNS, BUT DOES NOT APPLY TO ANY BREACH OF UPRR'S REPRESENTATIONS UNDER SUBPARAGRAPH (E) BELOW.

(c) Release by UPRR. UPRR, FOR ITSELF, ITS SUCCESSORS AND ASSIGNS, HEREBY WAIVES, RELEASES, REMISES, ACQUITS AND FOREVER DISCHARGES CITY, ITS EMPLOYEES, AGENTS, OFFICERS, HEIRS, SUCCESSORS AND ASSIGNS, OF AND FROM ANY AND ALL CLAIMS, SUITS, ACTIONS, CAUSES OF ACTION, DEMANDS, RIGHTS, DAMAGES, COSTS, EXPENSES, PENALTIES, FINES OR COMPENSATION WHATSOEVER, DIRECT OR INDIRECT, WHICH UPRR NOW HAS OR

WHICH UPRR MAY HAVE IN THE FUTURE ON ACCOUNT OF OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE KNOWN OR UNKNOWN PHYSICAL OR ENVIRONMENTAL CONDITION OF CITY PROPERTY (INCLUDING, WITHOUT LIMITATION, ANY CONTAMINATION IN, ON, UNDER OR ADJACENT TO CITY PROPERTY BY ANY HAZARDOUS OR TOXIC SUBSTANCE OR MATERIAL), OR ANY FEDERAL, STATE OR LOCAL LAW, ORDINANCE, RULE OR REGULATION APPLICABLE THERETO, INCLUDING, WITHOUT LIMITATION, THE TOXIC SUBSTANCES CONTROL ACT, THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT, AND THE RESOURCE CONSERVATION AND RECOVERY ACT. THE FOREGOING APPLIES REGARDLESS OF ANY NEGLIGENCE OR STRICT LIABILITY OF CITY, ITS EMPLOYEES, AGENTS, OFFICERS, HEIRS, SUCCESSORS OR ASSIGNS, BUT DOES NOT APPLY TO ANY BREACH OF CITY'S REPRESENTATIONS UNDER SUBPARAGRAPH (D) BELOW.

(d) Representations and Warranties of City. City represents and warrants to UPRR that, except as listed on Schedule 6(d) attached, the following matters are true as of the Effective Date, and will also be true as of Closing, and will survive and not merge into the Closing, and notwithstanding anything to the contrary in this Agreement, the effect of such representations and warranties will not be diminished or deemed to be waived by any inspections, tests or investigations made by or on behalf of UPRR:

(i) This Agreement has been (and all transfer documents to be delivered by City to UPRR at Closing will be) duly authorized, executed and delivered by City, are (or, in the case of the transfer documents, will be) legal, valid, and binding obligations of City, enforceable in accordance with their terms, and do not and will not violate any provisions of any agreement to which City is a party.

(ii) At Closing there will be no outstanding contracts made by City for any improvements to the City Property which have not been fully paid for, and City shall cause to be discharged all obligations under any such contracts and all mechanic's, materialmen's and other liens arising from any labor, materials, goods or services furnished before Closing that pertain to the City Property.

(iii) City is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1954, as amended, and City shall furnish to UPRR at or before Closing a certificate in the form required by Section 1445(f)(3).

(e) Representations and Warranties of UPRR. UPRR represents and warrants to City that, except as listed on Schedule 5(e) attached, the following matters are true as of the Effective Date, and will also be true as of Closing, and will survive and not merge into the Closing, and notwithstanding anything to the contrary in this Agreement, the effect of such representations and warranties will not be diminished or deemed to be waived by any inspections, tests or investigations made by or on behalf of City:

(i) This Agreement has been (and all transfer documents to be delivered by UPRR to City at Closing will be) duly authorized, executed and delivered by UPRR, are

(or, in the case of the transfer documents, will be) legal, valid, and binding obligations of UPRR, enforceable in accordance with their terms, and do not and will not violate any provisions of any agreement to which UPRR is a party.

(ii) At Closing there will be no outstanding contracts made by UPRR for any improvements to the UPRR Property which have not been fully paid for, and UPRR shall cause to be discharged all obligations under any such contracts and all mechanic's, materialmen's and other liens arising from any labor, materials, goods or services furnished to UPRR before Closing that pertain to the UPRR Property.

(iii) UPRR is not a "foreign person" within the meaning of Section 1445(f)(3) of the Internal Revenue Code of 1954, as amended, and UPRR shall furnish to City at or before Closing a certificate in the form required by Section 1445(f)(3).

Section 6. Loss by Fire, Other Casualty or Condemnation.

(a) Notwithstanding any other provision in this Agreement, until Closing UPRR is solely responsible for all risk of casualty or other loss or damage to the UPRR Property, and City is solely responsible for all risk of casualty or other loss or damage to the City Property.

(b) If all or any portion of an Easement Exchange Property is destroyed or materially damaged or if condemnation proceedings are commenced or threatened, then the Acquiring Party may elect to either (i) terminate this Agreement, in which event this Agreement will be of no further force and effect and without further obligation of either party to the other; or (ii) treat this Agreement as being in full force and effect, in which event all condemnation awards or proceeds of insurance payable to the other party will be paid or assigned to the Acquiring Party. Notice of the Acquiring Party's election must be given to the other party within thirty (30) days after the Acquiring Party receives written notice of the destruction, damage or condemnation proceedings. Failure of an Acquiring Party to make such election within said period shall be deemed an election under clause (ii) above.

Section 7. Notices.

Any notices required or desired to be given under this Agreement must be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices will be deemed valid only to the extent (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice within three (3) business days. Notices given by mail must be sent, postage prepaid, by certified mail, return receipt requested. All notices must be addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

UPRR: UNION PACIFIC RAILROAD COMPANY
 ATTN: Rodney S. Carroll
 Senior Manager-Acquisitions
 1400 Douglas Street, Mail Stop 1690
 Omaha, Nebraska 68179
 Telephone: (402) 544-2221
 Facsimile: (402) 501-0340

with copy to: UNION PACIFIC RAILROAD COMPANY
 ATTN: Patrick R. McGill
 Senior Counsel-Real Estate
 1400 Douglas Street, Mail Stop 1580
 Omaha, Nebraska 68179
 Telephone: (402) 544-5761
 Facsimile: (402) 501-0132

City: CITY OF WICHITA
 ATTN: John Philbrick, Real Estate Administrator
 City Hall, 455 North Main
 Wichita, Kansas 67202
 Telephone: (316) 268-4237
 Facsimile: (316) 838-7890

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

Section 8. No Brokers.

The negotiations relative to this Agreement and the transactions contemplated by this Agreement have been conducted by the parties without the intervention of any person that would give rise to any valid claim against either of the parties for brokerage commissions or other like payment. Each party shall indemnify and hold harmless the other party against and from any and all claims for brokerage commission or other like payment arising out of the transactions contemplated by this Agreement and occasioned by the actions of such indemnifying party.

Section 9. Successors and Assigns.

This Agreement is binding upon and will inure to the benefit of each party and their respective heirs, successors and assigns, except that City's interest under this Agreement may not be assigned, encumbered or otherwise transferred, whether voluntarily, involuntarily, by operation of law or otherwise. Any assignment, encumbrance or other transfer in violation of the foregoing will be void and City will be deemed in default under this Agreement.

Section 10. Time of the Essence.

Time is of the essence of this Agreement.

Section 11. Not An Offer.

The submission of this Agreement from UPRR to City for review or signature does not constitute an offer to exchange the Easement Exchange Properties. No agreement with respect to the exchange of the Easement Exchange Properties will exist, and this writing will have no binding force or effect, until executed and delivered by both UPRR and City.

Section 12. Exhibits.

The contents of the exhibits and schedules attached to this Agreement are incorporated by reference.

Section 13. Severability.

In the event that any of the provisions of this Agreement shall be held to be invalid or unenforceable by a court of competent jurisdiction under applicable law, the remaining portions hereof shall remain in full force and effect and such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed to the extent necessary to make such provision valid and enforceable.

Section 14. Entire Agreement.

This Agreement contains the entire agreement between UPRR and City with respect to the transactions contemplated in this Agreement and supersedes all prior agreements between UPRR and City, whether written or oral. This Agreement may not be modified or amended except by a written instrument executed by each of the Acquiring Parties to this Agreement.

Section 15. Survival of Terms.

The terms, covenants, warranties and representations contained in this Agreement will not merge with the deeds to be delivered at Closing, but rather will continue and survive Closing.

(Remainder of page intentionally left blank)

Section 16. Governing Law.

This Agreement shall be governed in all respects by the laws of the State of Kansas, and any lawsuit filed by either party under this Agreement shall be filed in Sedgwick County, Kansas.

UPRR:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

By: _____

Title: _____

CITY:

**CITY OF WICHITA
By Direction of the City Council**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

EXHIBIT A

Print Showing Location of UPRR Property

EXHIBIT B

Print Showing Location of City Property

EXHIBIT C**RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:**

City of Wichita

Attn: _____

455 North Main

Wichita, Kansas 67202

SPACE ABOVE FOR RECORDER'S USE ONLY

2547-98

**ROADWAY EASEMENT DEED AND AGREEMENT
(for UPRR Property)**

THIS ROADWAY EASEMENT DEED AND AGREEMENT is made as of the _____ day of _____, 2011, between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and **CITY OF WICHITA**, a Kansas municipal corporation ("Grantee"), whose address is 455 North Main, Wichita, Kansas 67202.

Grantor, for and in consideration of the sum of One Dollar (\$1.00) and other valuable consideration to it paid by the Grantee, the receipt whereof is hereby confessed and acknowledged, does hereby grant unto the Grantee, and its successors and assigns, a **NON-EXCLUSIVE EASEMENT** ("Easement") for the sole purpose of constructing, using, maintaining, repairing, renewing and reconstructing a private roadway ("Roadway") on, along and across certain property in Sedgwick County, State of Kansas, described in **Exhibit A**, attached and by reference made a part of this Easement Deed (the "Easement Area")

The Easement herein granted is for surface roadway purposes only. Grantor reserves the right to use the Roadway to be constructed by Grantee hereunder for access to Grantor's adjacent railroad right-of-way. Without limitation of the foregoing, this grant does not include the right to install utilities of any nature, including, without limitation, fiber optic, cable television, electrical, gas or liquid distribution, and telephone lines, or the right to access any other property of Grantor.

RESERVING, however, unto Grantor, its successors and assigns, the right to construct at any and all times and to maintain railroad tracks, fiber optic, telephone and other communication lines, electric wires, and pipelines, and their appurtenances, upon, over, under and across the Easement Area, and to grant such rights to third parties, but in such a way as to not unreasonably interfere with Grantee's use of the Easement Area for the purposes specified in this Deed; it being understood that the rights so reserved unto Grantor, its successors and assigns, are retained along with the general right of Grantor, its successors and assigns, to the use of the

Easement Area for any purpose not inconsistent with Grantee's use of the Easement Area for the purposes herein defined.

This grant of easement is made SUBJECT to all outstanding leases, licenses and other outstanding rights, including, but not limited to, those for pipe, telephone, electric and fiber optic lines and the right of renewals and extensions of the same, and subject also to all conditions, limitations, restrictions, encumbrances, reservations or interests of any person which may affect the Easement Area, whether recorded or unrecorded.

The easement herein granted is also limited to such rights as Grantor may have in the Easement Area and is granted without warranty, express or implied. No damages shall be recoverable from Grantor because of any dispossession of Grantee or because of failure of, or defect in, Grantor's title.

The Roadway shall be constructed and completed by Grantee in conformity with plans and specifications approved by Grantor. 100% construction plans and specifications shall be provided by Grantee to Grantor within six (6) months after the date of delivery of this Deed and approval of such plans and specifications shall be provided by Grantor to Grantee within thirty (30) days of receipt thereof. The Roadway must maintain positive drainage away from Grantor's railroad track. If Grantee's plans and specifications provide for the top of a curb elevation higher than the railroad subgrade, then Grantee shall install an under drain system, approved by Grantor, sufficient to drain the area between the railroad tracks. Grantee agrees to furnish all labor, materials, tools, equipment, machinery, services, supplies, transportation, facilities and other items necessary to manage, construct and complete the Roadway in accordance with such plans and specifications. "Final Completion" shall be achieved not later than January 31, 2012. "Final Completion" of the work shall be deemed to have occurred when (i) the work has been fully completed to Grantor's satisfaction in accordance with the specifications; (ii) Grantee submits to Grantor and Grantor approves (A) final waivers and releases of liens and claims from any contractor, subcontractor, materialmen and suppliers, and (B) Grantee's affidavit that all indebtedness connected with the work for which Grantee may be responsible has been paid or otherwise satisfied; and (iii) all claims of lien and stop notices that may have been recorded or notice thereof served on Grantor have been paid in full and released. If Grantee fails to achieve Final Completion on or before January 31, 2012, then, in addition to Grantor's other remedies at equity or in law, Grantor may elect to take over the work and prosecute the same to Final Completion by contract or otherwise, in which event Grantor may take possession of and utilize in completing the work such materials and equipment as may be on location and necessary to the Roadway, and in so completing construction of the Roadway, bill Grantee therefor. If this Easement is terminated prior to Final Completion for any reason other than default of Grantor, Grantor shall be entitled to retain any and all Roadway work at no expense to Grantor.

As part of the Roadway construction, Grantee shall install a swing gate and lock at Hillside Street to prevent encroachment on the Roadway by the public. Grantee shall provide a key to the lock to Grantor at the following address:

Union Pacific Railroad Company
 Attention: Ruben D. Lopez, Superintendent Transportation Services
 2645 New York Street
 Wichita, Kansas 67219
 Telephone: (316) 268-9485
 Cell: (316) 293-6494
 E-Mail: rdlopez@up.com

The lock on the gate may not be changed unless Grantor is immediately supplied with a copy of the new key.

Grantee covenants to maintain the Roadway and Easement Area in good repair so that no damage will result from its use to the adjacent land of Grantor, its successors and assigns. Grantee covenants that its use of the Roadway and Easement will not interfere with the railroad operations of Grantor, its successors and assigns.

Grantee agrees that no assessments will be levied against the Easement Area or Grantor to defray any part of the expenses incurred in connection with any construction by Grantee on the Easement Area.

To the extent it may lawfully do so, Grantee agrees to indemnify, defend, and hold harmless Grantor and its affiliates, their officers, agents, employees, successors or assigns (the "Indemnitees"), against and from any and all liability (including, without limitation, strict liability), damages (including, without limitation, consequential or punitive damages), claims, demands, actions, causes of action, costs and expenses of whatsoever nature (including, without limitation, court costs and attorneys' fees), which may result from personal injury to or death of persons whomsoever, or damage to or loss or destruction of property whatsoever, when such personal injury, death, loss, destruction or damage, howsoever caused, grows out of or arises from the exercise by Grantee of any of the easement rights herein granted. The foregoing indemnity shall apply regardless of any negligence or strict liability of the Indemnitees, their affiliates, employees, agents, officers, successors and assigns, except, however, the obligations to indemnify shall not be applicable to any claim (i) caused solely by the direct and active negligence of an Indemnatee, or (ii) to the extent attributable to the gross negligence or willful and wanton misconduct of an Indemnatee as determined in a final judgment by a court of competent jurisdiction. The term "affiliate" (or "affiliates" as the case may be) as used herein means any corporation which directly or indirectly controls, or is controlled by, or is under common control with Grantor.

Grantee acknowledges that Grantee is accepting the Easement Area in an "AS IS" condition, and that it has not relied on any warranties, promises, understandings or representations, express or implied, of Grantor or its agents or employees. Grantee shall perform and rely upon its own independent investigation of the physical condition of the Easement Area. Grantee hereby releases Grantor from all responsibility and liability regarding the condition (including, but not limited to, the condition of the soil, presence of hazardous materials or contaminants and all other physical characteristics), valuation or utility of the Easement Area.

It is expressly made a condition of this grant of easement that if Grantee, its successors or assigns, shall abandon the Easement Area or any portion of the Easement Area for the purposes of the Easement herein granted, the rights herein granted shall cease and terminate with respect to the portion of the Easement Area so abandoned, and the title to the Easement Area shall be freed from the burden of the Easement. It is further agreed that nonuse of the Easement Area or any portion thereof for the purposes of the Easement herein granted for the period of one (1) year shall be deemed an abandonment of the Easement Area or portion thereof not used.

Any notices required or desired to be given under this grant of easement must be in writing and personally served, given by overnight express delivery, or given by mail. Telecopy notices will be deemed valid only to the extent (a) actually received by the individual to whom addressed and (b) followed by delivery of actual notice within three (3) business days. Notices given by mail must be sent, postage prepaid, by certified mail, return receipt requested. All notices must be addressed to the party to receive at the following address or at such other address as the party may from time to time direct in writing:

Grantor:	UNION PACIFIC RAILROAD COMPANY ATTN: Assistant Vice President-Real Estate 1400 Douglas Street, Mail Stop 1690 Omaha, Nebraska 68179 Telephone: (402) 544-8640 Facsimile: (402) 501-0340
City:	CITY OF WICHITA ATTN: John Philbrick, Real Estate Administrator City Hall, 455 North Main Wichita, Kansas 67202 Telephone: (316)268-4237 Facsimile: (316)858-7890

Express delivery notices shall be deemed to be given upon receipt. Postal notices shall be deemed to be given three (3) days after deposit with the United States Postal Service.

(Signatures on following page)

IN WITNESS WHEREOF, Grantor and Grantee have caused this Roadway Easement Deed and Agreement to be duly executed as of the date first herein written.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Assistant Secretary

(Seal)

By: _____
Name: _____
Title: _____

**CITY OF WICHITA
By Direction of the City Council**

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

WITNESS my hand and official seal.

(Seal)

STATE OF KANSAS)
) ss.
 COUNTY OF SEDGWICK)

On _____, 2011, before me, a Notary Public in and for said County and State, personally appeared _____ who is the _____ of the City of Wichita, Kansas, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

 Notary Public

(Seal)

EXHIBIT A TO EXHIBIT C

LEGAL DESCRIPTION OF EASEMENT AREA

A tract of land described as follows:

COMMENCING at the Southwest Corner of the Southeast Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M.; Thence Bearing N01°35'27"W, along the west line of said Southeast Quarter, a distance of 543.47 feet to a point on the south right of way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad); Thence Bearing N70°03'56"E, along said south right of way line, a distance of 21.07 feet to the **POINT OF BEGINNING** (said Point of Beginning being 20.00 feet east of the west line of said Southeast Quarter); Thence continuing Bearing N70°03'56"E, along said south right of way line, a distance of 2,454.86 feet to the P.C. of a curve to the left; Thence continuing along said south right of way line being a curve to the left, having a radius of 5,977.22 feet, a chord bearing of N68°55'17"E, a chord distance of 238.69 feet and through a central angle of 02°17'17", an arc distance of 238.70 feet to a point that is 60.00 feet west of the east line of said Southeast Quarter; Thence Bearing N22°13'22"W, a distance of 25.00 feet to the P.C. of a curve to the right; Thence along said curve to the right, having a radius of 5,952.22 feet, a chord bearing of S68°55'17"W, a chord distance of 237.69 feet, through a central angle of 02°17'17", an arc distance of 237.71 feet; Thence Bearing S70°03'05"W, a distance of 1,954.86 feet; Thence Bearing S67°15'26"W, a distance of 500.60 feet to the **POINT OF BEGINNING**.

(Said tract of land containing 1.389 acres, more or less)

EXHIBIT D**RECORDING REQUESTED BY AND
WHEN RECORDED, RETURN TO:**

Union Pacific Railroad Company
 ATTN: Assistant Vice President-Real Estate
 1400 Douglas Street, MS 1690
 Omaha, Nebraska 68179

SPACE ABOVE FOR RECORDER'S USE ONLY

EASEMENT DEED

THIS Easement Deed is made this _____ day of _____, 2011, between **CITY OF WICHITA**, a municipal corporation of the State of Kansas ("Grantor") and **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantee").

Grantor, for and in consideration of One Dollar (\$1.00) and other valuable consideration paid to it, grants and conveys to Grantee, its successors and assigns, a PERPETUAL, EXCLUSIVE EASEMENT ("Easement") in, to, over, along, upon and across the property in Wichita, Sedgwick County, State of Kansas, described in **Exhibit A**, attached and by reference made a part of this Easement Deed (the "Property"), for the construction, use, operation, maintenance, repair, renewal and reconstruction of railroad trackage and track appurtenances thereto, together with the right of ingress and egress to and from the Property for the purpose of exercising the rights granted in this Easement Deed, and, if and when necessary, removing Grantee's property and facilities from the Property.

Grantor, for itself, its successors and assigns, covenants with Grantee, its successors and assigns, that Grantor has the full power and lawful authority to grant and convey the Easement. Grantor also covenants with Grantee that Grantor will warrant and defend Grantee's title to the Easement in the Property against the claims of all persons.

CITY OF WICHITA
By Direction of the City Council

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

ACKNOWLEDGMENT

STATE OF KANSAS)
) ss.
 COUNTY OF SEDGWICK)

On _____, 2011, before me, _____, Notary Public
 in and for said County and State, personally appeared _____,
 who is the _____ of _____, and
 who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the
 person whose name is subscribed to in the within instrument, and acknowledged to me that
 he/she executed the same in his/her authorized capacity, and that by his/her signature on the
 instrument the person, or the entity upon behalf of which the person acted, executed the
 instrument.

WITNESS my hand and official seal.

 Notary Public

(Seal)

EXHIBIT A TO EXHIBIT D

LEGAL DESCRIPTION OF CITY PROPERTY

A tract of land described as follows:

COMMENCING at the Southeast Corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M.; Thence Bearing N01°35'27"W, along the east line of said Southwest Quarter, a distance of 648.83 feet to a point on the north right of way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad) also being the **POINT OF BEGINNING**; Thence Bearing S70°03'56"W, along said north right of way line, a distance of 1,999.69 feet to a point on the south line of said Southwest Quarter (said point being 767.39 feet, more or less, east of the southwest corner of said Southwest Quarter); Thence Bearing N19°56'04"W, a distance of 30.22 feet; Thence Bearing N70°03'56"E, a distance of 2,009.71 feet to a point on the east line of said Southwest Quarter (said point being 680.67 feet, more or less, north of the southeast corner of said Southwest Quarter); Thence continuing Bearing N70°03'56"E, a distance of 11.05 feet; Thence Bearing S19°56'04"E, a distance of 30.22 feet to the aforesaid north right of way line of the Union Pacific Railroad, said point being 20.00 feet east of the east line of said Southwest Quarter; Thence Bearing S70°03'56"W, along said north right of way line, a distance of 21.07 feet to the **POINT OF BEGINNING**.
(Said tract of land containing 1.402 acres, more or less)

EXHIBIT E**TEMPORARY CONSTRUCTION EASEMENT AGREEMENT****(Not to be recorded)**

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT ("Agreement") is entered into as of the ____ day of _____, 2011, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation ("Grantor"), and **CITY OF WICHITA**, a municipal corporation of the State of Kansas ("Grantee").

1. Grant of Temporary Easement; Term.

(a) Grantor hereby grants to Grantee, its successors and assigns, a temporary easement upon, over, and across that certain real property in the City of Wichita, Sedgwick County, State of Kansas, described on **Exhibit A** attached hereto and made a part hereof (hereinafter the "Property" or "Temporary Easement Area") for the sole purpose of construction of a private roadway and demolition of a building on adjacent property over which Grantee has been granted easement rights.

(b) Grantor retains all of its rights to the use and occupation of the Temporary Easement Area not inconsistent with the use by Grantee, its successors or assigns.

(c) This Temporary Easement shall commence on _____, 2011 and shall automatically terminate upon completion of construction of the roadway, but in no event later than January 31, 2013.

2. Maintenance of Temporary Easement Area. Grantee, at its sole cost and expense and without any contribution whatsoever from Grantor, shall at all times during the term of this Agreement repair and maintain the Temporary Easement Area and any of Grantee's facilities thereon in good and clean condition and repair. Grantee shall restore any of the Property which is damaged by Grantee's use to the same condition as existed immediately before such damage occurred.

3. Release and Indemnification by Grantee. In exercising its rights and obligations under this Agreement, Grantee shall release and, to the extent allowable at law, indemnify, hold harmless and defend Grantor, its officers, directors and employees (collectively, the "Grantor Indemnified Parties") from and against any and all loss, cost, damage, liability and expense, (including reasonable attorneys' fees and expenses) for bodily injury to or death of persons, or damage to property of Grantor, to the extent caused by the negligence or intentional misconduct of Grantee, its officers, directors, employees, agents, guests, invitees, contractors, or subcontractors in connection with Grantee's use of the temporary easement rights granted pursuant to this Agreement. In addition, Grantee, to the extent allowable at law, covenants and agrees to indemnify, hold harmless and defend the Grantor Indemnified Parties and the Grantor's Property from and against any and all loss, cost, damage, liability and expense (including reasonable attorneys' fees and expenses), on account of claims of lien of laborers, materialmen,

or others, arising from or as a result of work performed or supplies furnished in connection with Grantee's use or occupancy of the Temporary Easement Area.

4. Contractor's Right Of Entry Agreement - Insurance

(a) Grantee shall require its contractor(s) and their subcontractors to (i) execute the Grantor's Contractor's Right of Entry Agreement (which provides for flagging) in the form attached hereto as **Exhibit B**; obtain the insurance coverage described therein; and (iii) provide the insurance policies, certificates, binders and/or endorsements to Grantor before allowing any of its contractor(s) and their respective subcontractors to commence any work in the Temporary Easement Area or on any other Grantor property.

(b) All insurance correspondence, binders, policies, certificates and/or endorsements shall be sent to:

Union Pacific Railroad Company
Real Estate Department
1400 Douglas Street - STOP 1690
Omaha, NE 68179-1690
ATTN: Rodney S. Carroll, Senior Manager-Acquisitions
UP File Folder No. 2547-98

(c) If Grantee's own employees will be performing any of the construction or demolition work, Grantee shall provide the Grantor defense and indemnification at least equal to the defense and indemnification to which the Grantor would be entitled as an additional insured had Grantee purchased General Liability Insurance and Automobile Liability Insurance each in an amount of not less than TWO MILLION DOLLARS (\$2,000,000) combined single limit per occurrence or claim and an aggregate limit of at least FOUR MILLION DOLLARS (\$4,000,000) for Bodily Injury and Property Damage. Nothing herein shall be deemed to insure Grantor against its sole negligence or willful misconduct. Grantee may self insure, as customary under its risk management programs; provided its self-insurance retention is in keeping with its net worth and cash flows and is consistent with that of other grantees of its size and operation. Notwithstanding the foregoing, if work is to be done within twenty-five (25) feet of the centerline of an active rail, the Railroad Protective Liability described in **Exhibit B**, Insurance Requirements, Section E. must be provided.

5. Mechanics' Liens. Grantee shall not permit any mechanics' or materialmen's liens of any kind or nature to be enforced against the Property for any work done or materials furnished thereon at Grantee's request.

6. No Warranty; Matters of Record. This Temporary Easement is limited to such rights as Grantor may have in the Temporary Easement Area and is granted without warranty, express or implied. This Temporary Easement is also made SUBJECT TO all outstanding leases, licenses and other outstanding rights of record, including, but not limited to, those for pipelines, wirelines and roadways and the right of renewals and extensions of the same.

7. Compliance with Law. Grantee shall, at its expense, comply with all applicable laws, regulations, rules and orders regardless of when they become or became effective, including, without limitation, those relating to health, safety, noise, environmental protection, waste disposal, and water and air quality in the construction, operation and maintenance of its facilities on Grantor's Property. Should any discharge, leakage, spillage, emission or pollution of any type occur upon or arise from the Property as a result of Grantee's use, presence, operations or exercise of the rights granted hereunder, Grantee shall, at its expense, be obligated to clean all property affected thereby, to the satisfaction of Grantor and any governmental body having jurisdiction in the matter.

8. Notices. All notices, demands and other communications hereunder shall be in writing and delivered personally or by a nationally recognized overnight courier service or mailed (by registered or certified mail, return receipt requested, postage prepaid) or telecopied with a confirming notice, addressed to the respective parties, as follows:

If to Grantee: City of Wichita
 Attn: John C. Philbrick, Real Estate Administrator
 City Hall, 455 North Main
 Wichita, Kansas 67202
 Telephone: (316)268-4237
 Facsimile: (316)-858-7890

If to Grantor: Union Pacific Railroad Company
 Attn: Rodney S. Carroll, Senior Manager-Acquisitions
 1400 Douglas Street - STOP 1690
 Omaha, Nebraska 68179-1690

or such additional parties or other address as such party may hereafter designate. Any notice permitted or required to be given shall be deemed to have been given, and any item permitted or required to be delivered or furnished shall be deemed to have been furnished, when personally delivered or furnished, or one (1) business day after delivery to a nationally recognized and reputable courier (such as UPS., Federal Express, or the like) guaranteeing next-day delivery with delivery charges prepaid, or after delivery or first attempted delivery by the United States Post Office, after being properly addressed and with postage prepaid for delivery by United States registered or certified mail.

9. Binding Effect. All covenants contained herein shall be deemed to be covenants that run with the land, and shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. All references to Grantor, Grantee or parties shall be deemed to include the respective party's employees, invitees, agents, successors, and assigns.

10. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which shall constitute one and the same agreement.

11. Captions. The section headings appearing in this Agreement are inserted only as a matter of convenience and in no way define or limit the scope of any section.

12. Modifications. Any modifications or amendments to this Agreement shall be made in writing and be executed by all parties.

13. Waiver. The failure by any party to enforce any provision of this Agreement in a timely manner shall not be deemed a waiver of the right to enforce that provision, and any express waiver by any party of any breach of any provision of this Agreement shall not be deemed a waiver of any subsequent breach of that provision.

14. Severability. Any provision of this Agreement which is determined by a court of competent jurisdiction to be invalid or unenforceable shall be invalid or unenforceable only to the extent of such determination, which shall not invalidate or otherwise render ineffective any other provision of this Agreement.

15. Agreement Not To Be Assigned. Grantee shall not assign this Agreement, in whole or in part, or any rights herein granted, without the written consent of the Grantor, and it is agreed that any transfer or assignment or attempted transfer or assignment of this Agreement or any of the rights herein granted, whether voluntary, by operation of law, or otherwise, without such consent in writing, shall be absolutely void and, at the option of the Grantor, shall terminate this Agreement.

16. Successors and Assigns. Subject to the provisions of Section 15, this Agreement shall be binding upon and inure to the benefit of the parties hereto, their heirs, executors, administrators, successors and assigns.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

Attest:

**UNION PACIFIC RAILROAD COMPANY,
a Delaware corporation**

Assistant Secretary

(Seal)

By: _____
Name: _____
Title: _____

The undersigned Grantee hereby accepts this Temporary Easement, and agrees for itself, its successors and assigns to be bound by the covenants and conditions set forth herein and to perform all obligations of Grantee set forth herein.

CITY OF WICHITA
By Direction of the City Council

Carl Brewer, Mayor

ATTEST:

Karen Sublett, City Clerk

APPROVED AS TO FORM:

Gary E. Rebenstorf, Director of Law

STATE OF NEBRASKA)
) ss.
 COUNTY OF DOUGLAS)

On _____, 2011, before me, a Notary Public in and for said County and State, personally appeared _____ and _____ who are the _____ and the Assistant Secretary, respectively, of Union Pacific Railroad Company, a Delaware corporation, and who are personally known to me (or proved to me on the basis of satisfactory evidence) to be the persons whose names are subscribed to in the within instrument, and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

WITNESS my hand and official seal.

 Notary Public

(Seal)

STATE OF KANSAS)
) ss.
 COUNTY OF SEDGWICK)

On _____, 2011, before me, a Notary Public in and for said County and State, personally appeared _____ who is the _____ of the City of Wichita, Kansas, and who is personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to in the within instrument, and acknowledged to me that he/she executed the same in his/her authorized capacity, and that by his/her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

 Notary Public

(Seal)

EXHIBIT A TO EXHIBIT E

**LEGAL DESCRIPTION OF EASEMENT AREA
TO BE ATTACHED**

EXHIBIT B TO EXHIBIT E**RIGHT OF ENTRY AGREEMENT**

THIS AGREEMENT is made and entered into as of _____, 20____, by and between **UNION PACIFIC RAILROAD COMPANY**, a Delaware corporation (hereinafter the "Railroad"), and _____, a _____, to be addressed at _____, _____ (hereinafter the "Licensee").

IT IS MUTUALLY AGREED BY AND BETWEEN THE PARTIES HERETO AS FOLLOWS:**Article 1. DEFINITION OF LICENSEE.**

For purposes of this Agreement, all references in this Agreement to the Licensee shall include the Licensee's contractors, subcontractors, officers, agents and employees, and others acting under its or their authority.

Article 2. RIGHT GRANTED; PURPOSE.

The Railroad hereby grants to the Licensee the right, during the term hereinafter stated and upon and subject to each and all of the terms, provisions and conditions herein contained, to enter upon and have ingress to and egress from the portion of Railroad's property in the vicinity of Mile Post _____, _____ Subdivision, at or near Wichita, Kansas, for the purpose of construction of a roadway on adjacent property. The right herein granted to Licensee is limited to those portions of the Railroad's property specifically described herein in the location shown on the print marked **Exhibit A**, attached hereto and hereby made a part hereof, or designated by the Railroad Representative named in Article IV.

Article 3. TERMS AND CONDITIONS CONTAINED IN EXHIBITS B AND C.

The terms and conditions contained in **Exhibits B and C**, hereto attached, are hereby made a part of this Agreement.

Article 4. ALL EXPENSES TO BE BORNE BY LICENSEE; RAILROAD REPRESENTATIVE.

The Licensee shall bear any and all costs and expenses associated with any work performed by the Licensee, or any costs or expenses incurred by the Railroad relating to this Agreement. All work performed by Licensee on Railroad's property shall be performed in a manner satisfactory to the representative local Manager of Track Maintenance of the Railroad or his authorized representative (hereinafter the Railroad Representative):

Union Pacific Railroad Company
 Attention: Ruben D. Lopez, Superintendent Transportation Services
 2645 New York Street
 Wichita, Kansas 67219
 Telephone: (316) 268-9485
 Cell: (316) 293-6494
 E-Mail: rdlopez@up.com

Article 5. TERM; TERMINATION.

A. The grant of right herein made to Licensee shall commence on the date of this Agreement, and continue until January 31, 2013, unless sooner terminated as herein provided, or at such time as Licensee has completed its work on Railroad's property, whichever is earlier. Licensee agrees to notify the Railroad Representative in writing when it has completed its work on Railroad property.

B. This Agreement may be terminated by either party on ten (10) days written notice to the other party.

Article 6. CERTIFICATE OF INSURANCE.

A. Before commencing any work, the Licensee will provide the Railroad with a Certificate issued by its insurance carrier providing the insurance coverage required pursuant to **Exhibit C** of this Agreement in a policy which contains the following type of endorsement:

"Union Pacific Railroad Company is named as additional insured with respect to all liabilities arising out of Insured's, as Licensee, performance of any work on the property of the Railroad."

B. Licensee warrants that this Agreement has been thoroughly reviewed by its insurance agent(s)/broker(s) and that said agent(s)/broker(s) has been instructed to procure insurance coverage and an endorsement as required herein.

C. All insurance correspondence shall be directed to: Union Pacific Railroad Company, Director (Attn.: Rodney Carroll - Folder No.02626-73), 1400 Douglas Street STOP 1690, Omaha, Nebraska 68179-1690.

Article 7. PROTECTION OF FIBER OPTIC CABLE SYSTEMS.

Fiber optic cable systems may be buried on Licensor's property. Protection of the fiber optic cable systems is of extreme importance since any break could disrupt service to users resulting in business interruption and loss of revenue and profits. Prior to beginning any work, the Licensee shall telephone the Railroad at **1-800-336-9193** (a 24-hour number) to determine if fiber optic cable is buried anywhere on the property set forth herein. If it is, the Licensee shall also comply with and be subject to the provisions contained in Section 6 of Exhibit B.

Article 8. ENFORCEABILITY; CHOICE OF LAW; CHOICE OF FORUM.

This Agreement shall be governed, construed, and enforced in accordance with the laws of the state of Nebraska. Litigation arising out of or connected with this Agreement may be instituted and maintained in the courts of the state of Nebraska and Kanas only, and the parties consent to jurisdiction over their person and over the subject matter of any such litigation, in those courts, and consent to service of process issued by such courts.

Article 9. SPECIAL PROVISION – RAILROAD FLAGMAN; WHEN REQUIRED; FLAGGING CHARGES.

A. No work of any kind shall be performed, and no person, equipment, machinery, tool(s), material(s), vehicle(s), or thing(s) shall be located, operated, placed, or stored within 25 feet of any of

Railroad's track(s) at any time, for any reason, unless and until a Railroad flagman is provided to watch for trains, pursuant to the terms of the attached Exhibit "B". All expenses connected with the furnishing of said flagman shall be at the sole cost and expense of the Licensee, who shall promptly pay to Railroad all charges connected therewith, within 30 days after presentation of a bill therefore.

B. One and one-half times the current hourly rate is paid for overtime, Saturdays and Sundays; two and one-half times current hourly rate for holidays.

C. Wage rates are subject to change, at any time, by law or by agreement between the Railroad and its employees, and may be retroactive as a result of negotiations or a ruling of an authorized Governmental Agency. Additional charges on labor are also subject to change. If the wage rate or additional charges are changed, the Licensee shall pay on the basis of the new rates and charges.

D. Reimbursement to the Railroad will be required covering the full eight hour day during which any flagman is furnished, unless he can be assigned to other Railroad work during a portion of such day, in which event reimbursement will not be required for the portion of the day during which the flagman is engaged in other work. Reimbursement will also be required for any day not actually worked by said flagman following his assignment to work on the project for which the Railroad is required to pay the flagman and which could not reasonably be avoided by the Railroad Company by assignment of such flagman to other work, even though the Licensee may not be working during such time.

E. Arrangements for flagging are to be made at least Ten (10) days in advance of commencing work, with the Railroad Manager of Track Maintenance.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the date first herein written.

UNION PACIFIC RAILROAD COMPANY
Federal Taxpayer I.D. #94-6001323

_____ (Contractor)

By: _____
Manager - Contracts

By: _____
Title: _____

(Pursuant to ordinance, resolution, or other evidence of proper authority to execute this instrument, a copy of which shall be attached to the Railroad's original counterpart of this document.)

EXHIBIT A
TO
RIGHT OF ENTRY AGREEMENT

**PRINT SHOWING LOCATION OF
TEMPORARY CONSTRUCTION EASEMENT AREA**

EXHIBIT B
TO
RIGHT OF ENTRY AGREEMENT

Section 1 - NOTICE OF COMMENCEMENT OF WORK – FLAGGING.

The Licensee agrees to notify the Railroad Representative at least Ten (10) days in advance of Licensee commencing its work and at least 24 hours in advance of proposed performance of any work by the Licensee in which any person or equipment will be within 25 feet of any track, or will be near enough to any track that any equipment extension (such as, but not limited to, a crane boom) will reach to within 25 feet of any track. Upon receipt of such notice, the Railroad Representative will determine and inform the Licensee whether a flagman need be present and whether the Licensee need implement any special protective or safety measures. If any flagmen or other special protective or safety measures are performed by the Railroad, such services will be provided at Licensee's expense with the understanding that if the Railroad provides any flagging or other services, the Licensee shall not be relieved of any of its responsibilities or liabilities set forth herein.

Section 2 - LIMITATION AND SUBORDINATION OF RIGHTS GRANTED.

a. The foregoing grant of right is subject and subordinate to the prior and continuing right and obligation of the Railroad to use and maintain its entire property including the right and power of the Railroad to construct, maintain, repair, renew, use, operate, change, modify or relocate railroad tracks, roadways, signal, communication, fiber optics, or other wirelines, pipelines and other facilities upon, along or across any or all parts of its property, all or any of which may be freely done at any time or times by the Railroad without liability to the Licensee or to any other party for compensation or damages.

b. The foregoing grant is also subject to all outstanding superior rights (including those in favor of licensees and lessees of the Railroad's property, and others) and the right of the Railroad to renew and extend the same, and is made without covenant of title or for quiet enjoyment.

Section 3 - NO INTERFERENCE WITH RAILROAD'S OPERATION.

No work performed by Licensee shall cause any interference with the constant, continuous and uninterrupted use of the tracks, property and facilities of the Railroad, its lessees, licensees or others, unless specifically permitted under this Agreement, or specifically authorized in advance by the Railroad Representative. Nothing shall be done or suffered to be done by the Licensee at any time that would in any manner impair the safety thereof. When not in use, Licensee's machinery and materials shall be kept at least 50 feet from the centerline of Railroad's nearest track, and there shall be no crossings of Railroad's tracks except at existing open public crossings.

Section 4 - PERMITS.

Prior to beginning any work, the Licensee, at its sole expense, shall obtain all necessary permits to perform any work contemplated by this Agreement.

Section 5 - MECHANIC'S LIENS.

The Licensee shall pay in full all persons who perform labor or provide materials for the work to be performed by Licensee. The Licensee shall not create, permit or suffer any mechanic's or materialmen's liens of any kind or nature to be enforced against any property of the Railroad for any such

work performed. The Licensee shall indemnify and hold harmless the Railroad from and against any and all liens, claims, demands, costs or expenses of whatsoever nature in any way connected with or growing out of such work done, labor performed, or materials furnished.

Section 6 - FIBER OPTIC CABLE SYSTEMS.

In addition to other indemnity provisions in this Agreement, the Licensee shall indemnify and hold the Railroad harmless from and against all costs, liability and expense whatsoever (including, without limitation, attorneys' fees, court costs and expenses) arising out of any act or omission of the Licensee, its contractor, agents and/or employees, that causes or contributes to (1) any damage to or destruction of any telecommunications system on Railroad's property, and (2) any injury to or death of any person employed by or on behalf of any telecommunications company, and/or its contractor, agents and/or employees, on Railroad's property. Licensee shall not have or seek recourse against Railroad for any claim or cause of action for alleged loss of profits or revenue or loss of service or other consequential damage to a telecommunication company using Railroad's property or a customer or user of services of the fiber optic cable on Railroad's property.

Section 7 - COMPLIANCE WITH LAWS.

In the prosecution of the work covered by this Agreement, the Licensee shall comply with all applicable federal, state and local laws, regulations and enactments affecting the work. The Licensee shall use only such methods as are consistent with safety, both as concerns the Licensee, the Licensee's agents and employees, the officers, agents, employees and property of the Railroad and the public in general. The Licensee (without limiting the generality of the foregoing) shall comply with all applicable state and federal occupational safety and health acts and regulations. All Federal Railroad Administration regulations shall be followed when work is performed on the Railroad's property. If any failure by the Licensee to comply with any such laws, regulations, and enactments, shall result in any fine, penalty, cost or charge being assessed, imposed or charged against the Railroad, the Licensee shall reimburse and indemnify the Railroad for any such fine, penalty, cost or charge, including without limitation attorneys' fees, court costs and expenses. The Licensee further agrees in the event of any such action, upon notice thereof being provided by the Railroad, to defend such action free of cost, charge, or expense to the Railroad.

Section 8 - SAFETY INSTRUCTIONS.

Safety of personnel, property, rail operations and the public is of paramount importance in the prosecution of the work pursuant to this Agreement. As reinforcement and in furtherance of overall safety measures to be observed by the Licensee (and not by way of limitation), the following special safety rules shall be followed:

a. The Licensee shall keep the job site free from safety and health hazards and ensure that its employees are competent and adequately trained in all safety and health aspects of the job. The Licensee shall have proper first aid supplies available on the job site so that prompt first aid services can be provided to any person that may be injured on the job site. The Licensee shall promptly notify the Railroad of any U.S. Occupational Safety and Health Administration reportable injuries occurring to any person that may arise during the work performed on the job site. The Licensee shall have a non-delegable duty to control its employees, while they are on the job site or any other property of the Railroad to be certain they do not use, be under the influence of, or have in their possession any alcoholic beverage or illegally obtained drug, narcotic or other substance that may inhibit the safe performance of work by an employee.

b. The employees of the Licensee shall be suitably dressed to perform their duties safely and in a manner that will not interfere with their vision, hearing or free use of their hands or feet. Only waist length shirts with sleeves and trousers that cover the entire leg are to be worn. If flare-legged trousers are worn, the trouser bottoms must be tied to prevent catching. The employees should wear sturdy and protective footwear. Employees shall not wear boots (other than work boots), sandals, canvas-type shoes or other shoes that have thin soles or heels that are higher than normal. In addition, the Licensee shall require its employees to wear personal protective equipment as specified by Railroad rules, regulations or Railroad officials overlooking the work at the job site. In particular, the protective equipment to be worn shall be:

(1) Protective head gear that meets American National Standard-Z89.1-latest revision. It is suggested that all hardhats be affixed with Licensee's or subcontractor's company logo or name.

(2) Eye protection that meets American National Standard for occupational and educational eye and face protection, Z87.1-latest revision. Additional eye protection must be provided to meet specific job situations such as welding, grinding, burning, etc.; and

(3) Hearing protection which affords enough attenuation to give protection from noise levels that will be occurring on the job site.

c. All heavy equipment provided or leased by the Licensee shall be equipped with audible back-up warning devices. If in the opinion of the Railroad Representative any of Licensee's or any of its subcontractors' equipment is unsafe for use on the Railroad's right-of-way, the Licensee, at the request of the Railroad Representative, shall remove such equipment from the Railroad's right-of-way.

Section 9 - INDEMNITY.

a. As used in this Section, "Railroad" includes other railroad companies using the Railroad's property at or near the location of the Licensee's installation and their officers, agents, and employees; "Loss" includes loss, damage, claims, demands, actions, causes of action, penalties, costs, and expenses of whatsoever nature, including court costs and attorneys' fees, which may result from: (i) injury to or death of persons whomsoever (including the Railroad's officers, agents, and employees, the Licensee's officers, agents, and employees, as well as any other person); and (ii) damage to or loss or destruction of property whatsoever (including Licensee's property, damage to the roadbed, tracks, equipment, or other property of the Railroad, or property in its care or custody).

b. As a major inducement and in consideration of the license and permission herein granted, the Licensee agrees to indemnify and hold harmless the Railroad from any Loss which is due to or arises from any cause and is associated in whole or in part with the work performed under this Agreement, a breach of the Agreement or the failure to observe the health and safety provisions herein, or any activity or omission arising out of performance or nonperformance of this Agreement; regardless of whether caused solely or contributed to in part by the negligence or fault of the Railroad.

c. Any liability of either party hereunder to one of its employees under any Workers' Compensation Act or the Federal Employers' Liability Act shall not be questioned or in any way challenged by the other party, nor shall any jury or court findings, resulting from any employee's suit against either party pursuant to any such Act(s), be relied upon or used by either party in any attempt to assert common law liability against the other.

Section 10 - RESTORATION OF PROPERTY.

In the event the Railroad authorizes the Licensee to take down any fence of the Railroad or in any manner move or disturb any of the other property of the Railroad in connection with the work to be performed by Licensee, then in that event the Licensee shall, as soon as possible and at Licensee's sole expense, restore such fence and other property to the same condition as the same were in before such fence was taken down or such other property was moved or disturbed, and the Licensee shall indemnify and hold harmless the Railroad, its officers, agents and employees, against and from any and all liability, loss, damages, claims, demands, costs and expenses of whatsoever nature, arising from the taking down of any fence or the moving or disturbance of any other property of the Railroad.

Section 11 - WAIVER OF BREACH.

The waiver by the Railroad of the breach of any condition, covenant or agreement herein contained to be kept, observed and performed by the Licensee shall in no way impair the right of the Railroad to avail itself of any remedy for any subsequent breach thereof.

Section 12 - ASSIGNMENT – SUBCONTRACTING.

The Licensee shall not assign, sublet or subcontract this Agreement, or any interest therein, without the written consent of the Railroad and any attempt to so assign, sublet or subcontract without the written consent of the Railroad shall be void. If the Railroad gives the Licensee permission to subcontract all or any portion of the work herein described, the Licensee is and shall remain responsible for all work of subcontractors and all work of subcontractors shall be governed by the terms of this Agreement.

EXHIBIT C
TO
RIGHT OF ENTRY AGREEMENT

Union Pacific Railroad
Contract Insurance Requirements

Licensee shall, at its sole cost and expense, procure and maintain during the life of this Agreement (except as otherwise provided in this Agreement) the following insurance coverage:

A. Commercial General Liability insurance. Commercial general liability (CGL) with a limit of not less than \$5,000,000 each occurrence and an aggregate limit of not less than \$10,000,000. CGL insurance must be written on ISO occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage).

The policy must also contain the following endorsement, which must be stated on the certificate of insurance:

- Contractual Liability Railroads ISO form CG 24 17 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Railroad Company Property" as the Designated Job Site.

B. Business Automobile Coverage insurance. Business auto coverage written on ISO form CA 00 01 (or a substitute form providing equivalent liability coverage) with a combined single limit of not less \$2,000,000 for each accident.

The policy must contain the following endorsements, which must be stated on the certificate of insurance:

- Coverage For Certain Operations In Connection With Railroads ISO form CA 20 70 10 01 (or a substitute form providing equivalent coverage) showing "Union Pacific Property" as the Designated Job Site.
- Motor Carrier Act Endorsement - Hazardous materials clean up (MCS-90) if required by law.

C. Workers Compensation and Employers Liability insurance. Coverage must include but not be limited to:

- Licensee's statutory liability under the workers' compensation laws of the state(s) affected by this Agreement.
- Employers' Liability (Part B) with limits of at least \$500,000 each accident, \$500,000 disease policy limit \$500,000 each employee.

If Licensee is self-insured, evidence of state approval and excess workers compensation coverage must be provided. Coverage must include liability arising out of the U. S. Longshoremen's and Harbor Workers' Act, the Jones Act, and the Outer Continental Shelf Land Act, if applicable.

D. Railroad Protective Liability insurance. Licensee must maintain Railroad Protective Liability insurance written on ISO occurrence form CG 00 35 12 04 (or a substitute form providing equivalent coverage) on behalf of Railroad as named insured, with a limit of not less than \$2,000,000 per occurrence and an aggregate of \$6,000,000. A binder stating the policy is in place must be submitted to Railroad before the work may be commenced and until the original policy is forwarded to Railroad.

E. Umbrella or Excess insurance. If Licensee utilizes umbrella or excess policies, these policies must "follow form" and afford no less coverage than the primary policy.

F. Pollution Liability insurance. Pollution Liability coverage must be included when the scope of the work as defined in the Agreement includes installation, temporary storage, or disposal of any “hazardous” material that is injurious in or upon land, the atmosphere, or any watercourses; or may cause bodily injury at any time.

Pollution liability coverage must be written on ISO form Pollution Liability Coverage Form Designated Sites CG 00 39 12 04 (or a substitute form providing equivalent liability coverage), with limits of at least \$5,000,000 per occurrence and an aggregate limit of \$10,000,000.

If the scope of work as defined in this Agreement includes the disposal of any hazardous or non-hazardous materials from the job site, Licensee must furnish to Railroad evidence of pollution legal liability insurance maintained by the disposal site operator for losses arising from the insured facility accepting the materials, with coverage in minimum amounts of \$1,000,000 per loss, and an annual aggregate of \$2,000,000.

Other Requirements

G. All policy(ies) required above (except worker’s compensation and employers liability) must include Railroad as “Additional Insured” using ISO Additional Insured Endorsements CG 20 26, and CA 20 48 (or substitute forms providing equivalent coverage). The coverage provided to Railroad as additional insured shall, to the extent provided under ISO Additional Insured Endorsement CG 20 26, and CA 20 48 provide coverage for Railroad’s negligence whether sole or partial, active or passive, and shall not be limited by Licensee’s liability under the indemnity provisions of this Agreement.

H. Punitive damages exclusion, if any, must be deleted (and the deletion indicated on the certificate of insurance), unless (a) insurance coverage may not lawfully be obtained for any punitive damages that may arise under this agreement, or (b) all punitive damages are prohibited by all states in which this agreement will be performed..

I. Licensee waives all rights against Railroad and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by the workers compensation and employers liability or commercial umbrella or excess liability insurance obtained by Licensee required by this agreement.

J. Prior to commencing the work, Licensee shall furnish Railroad with a certificate(s) of insurance, executed by a duly authorized representative of each insurer, showing compliance with the insurance requirements in this Agreement.

K. All insurance policies must be written by a reputable insurance company acceptable to Railroad or with a current Best’s Insurance Guide Rating of A- and Class VII or better, and authorized to do business in the state(s) in which the work is to be performed.

L. The fact that insurance is obtained by Licensee or by Railroad on behalf of Licensee will not be deemed to release or diminish the liability of Licensee, including, without limitation, liability under the indemnity provisions of this Agreement. Damages recoverable by Railroad from Licensee or any third party will not be limited by the amount of the required insurance coverage.

**SUBMITTING REQUESTS FOR
RAILROAD PROTECTIVE LIABILITY INSURANCE**
(\$2,000,000 per occurrence/\$6,000,000 aggregate)

Application forms for inclusion in Union Pacific Railroad's Blanket Railroad Protective Liability Insurance Policy may be obtained by accessing the following website (includes premiums as well):

www.uprr.com/reus/rrinsure/insurovr.shtml

If you have questions regarding railroad protective liability insurance (i.e. premium quotes, application) please contact the Marsh USA Service Team, Bill Smith or Cindy Long at:

Phone: (800) 729-7001

Fax: (816) 556-4362

Email: william.j.smith@marsh.com

Email: cindy.long@marsh.com

***PLEASE NOTE** - The RPLI application and premium check should be sent directly to Marsh, USA at the address shown below - do NOT send your check and application via overnight air, as the P.O. Box will NOT accept overnight deliveries.

If you are in a situation where you require a RUSH, please contact Bill Smith or Cindy Long and they will do their best to accommodate your needs. All checks written to Marsh, USA should reference Union Pacific Railroad in the "Memo" section of the check.

Send Checks and Applications to the following "NEW" address:

Marsh USA
NW 8622
PO Box 1450
Minneapolis, MN 55485-8622

EXHIBIT F**Description of Railroad Crossing Area to be Vacated**

A tract of land described as follows:

COMMENCING at the Southeast Corner of the Southwest Quarter of Section 34, Township 26 South, Range 1 East of the 6th P.M.; Thence Bearing N01°35'27"W, along the east line of said Southwest Quarter a distance of 543.47 feet to a point on the south right of way line of the Union Pacific Railroad (formerly Missouri Pacific Railroad) also being the **POINT OF BEGINNING**; Thence Bearing S70°03'56"W, along said south right of way line, a distance of 26.34 feet; Thence Bearing N01°35'27"W, parallel with and 25 feet west of the east line of said Southwest Quarter, a distance of 105.35 feet to a point on the north right of way line of said Union Pacific Railroad; Thence Bearing N70°03'56"E, along said north right of way line, a distance of 52.68 feet; Thence Bearing S01°35'27"E, parallel with and 25 feet east of the east line of said Southwest Quarter, a distance of 105.35 feet to a point on the aforesaid south right of way line of said Union Pacific Railroad; Thence Bearing S70°03'56"W, along said south right of way line, a distance of 26.34 feet to the **POINT OF BEGINNING**.

(Said tract of land containing 0.121 acres, more or less)

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Proposed 2011 Contracted Street Maintenance Program (All Districts)

INITIATED BY: Department of Public Works & Utilities

AGENDA: Consent

Recommendation: Approve the Contracted Street Maintenance Program.

Background: Each year, funding is allocated in the City's budget for contracted repairs and resurfacing of City streets. The Contract Street Maintenance Program (CMP) provides maintenance work including concrete repairs, curb and gutter repairs, bridge repairs, crack repairs, and asphalt surface treatments of City streets. The CMP supplements work done by City crews and are funded by the Street Maintenance budget.

Analysis: The City of Wichita is responsible for maintenance of approximately 1,795 miles of paved streets, and 93 miles of dirt streets. In addition, the City maintains 348 vehicular bridges and 36 pedestrian bridges. The Department of Public Works & Utilities utilizes a computerized Pavement Management System (PMS) to assess the street conditions throughout the City, and prioritize needed repairs. Staff uses this information, along with citizen input and Capital Improvement Program planning documents, to develop the maintenance program.

As proposed, the 2011 program will provide repairs to approximately 16.87 lane miles of arterial streets, and 28.96 lane miles of collector and residential streets. In addition, the program will address numerous other concerns, including replacement of a pedestrian bridge, Americans with Disabilities Act mandated upgrades to wheelchair ramps, and the provision of engineering oversight and inspection. The program also includes \$1 million in locations originally approved in the 2010 CMP.

Financial Considerations: The proposed total expenditure for Contracted Street Maintenance Program is \$6,000,000. Funds have been approved in the 2011 budget for the program.

Goal Impact: This project addresses the Efficient Infrastructure goal by providing improved, safer streets throughout the City.

Legal Considerations: There are no legal considerations.

Recommendations/Actions: It is recommended that the City Council approve the 2011 Contract Street Maintenance Program.

Attachments: Informational packet.

2011 Proposed Contract Maintenance Program, \$6M

December, 2010

CONTRACT MAINTENANCE PROGRAM (CMP) LOCATION SELECTION PROCESS

Locations to be addressed in the CMP are determined using the following criteria.

1. **The Pavement Condition Index (PCI)**

Every street segment in the City has been assigned a PCI number. These numbers are determined by evaluating each segment for various pavement distresses. The PCI's range from 0 to 100, with a value of 75 being the targeted goal. Streets with PCI's below 70, and especially below 50, are considered first in the CMP. We also use the PCI as a guide for preventative maintenance (PM), if funding allows. The PM helps delay streets from dropping into a lower condition range and, as a result, requiring much more expensive repairs.

2. **Completion of locations previously identified.**

If repairs to streets previously scheduled were not able to be done or completed, they are usually put into the following years CMP.

3. **Complaints and/or Requests**

All complaints and/or requests about existing street conditions (from the Public, City officials, supervisors, or employees doing the repairs) are responded to. These locations are continuously evaluated in comparison to other streets in the program, and included whenever necessary.

4. **Maintenance History/Other Projects**

If a particular street has required continued maintenance from City staff, or routine maintenance operations are no longer effective, it is considered as a possible CMP candidate. Streets that are scheduled to be repaired in other upcoming programs, such as the Capital Improvement Program (CIP), are not included in the CMP. We also make every effort to work with utility companies to coordinate work whenever possible.

Once the CMP funding level has been established, the program is developed. Expenses not considered to benefit any single district (inspection costs, bridge work, bike paths, etc.) are deducted first. Using the criteria above, the remaining funds are applied equally to each of the City's 6 districts. Some districts will have more locations or miles addressed than others due to the condition of the existing roadways in the City and widely different repair costs necessary.

Pavement Maintenance Definitions:

Mill and Overlay: The existing asphalt surface is removed by grinding (milling) and a new 2" asphalt wearing surface is constructed.

Heather Scarification: An overlay in which the top surface of an existing asphalt roadway is heated and scarified to depth of one inch and overlaid at the same time with an inch of new hot mix asphalt pavement.

Preservative Seal: An asphalt surface preservation treatment in which a rejuvenating solution is applied to the pavement to slow down weathering and extend the pavement life.

Micro Surfacing: A high-performance surface seal in which a layer of relatively large aggregate, formulated polymer emulsion (as a binder) and mineral fillers is applied to the street.

Concrete Repair: Removal and replacement of deteriorating concrete pavement.

Rehabilitation: Removal of old asphalt pavement, followed by subgrade stabilization, and construction of new asphalt pavement.

2011 Proposed Contract Maintenance Program Funds Allocation (\$6M)

Total Available for 2011 CMP Funding:		\$6,000,000.00
City Wide Expenditure	Engineering Salaries & Overhead	\$450,000.00
	Advertising, etc	\$1,000.00
	Prep Curb & Gutter and Wheel Chair Ramps Upgrade	\$160,000.00
	Asphalt Thermal Crack Repair (Locations Vary)	\$100,000.00
	Pedestrian Bridge Replacement at Cheyenne & Glen Oak	\$98,000.00
	Street Repair In Conjunction with Scheduled Engineering Project (1st St & Handley)	\$15,000.00
	Preservative Seal	\$90,000.00
	Arterial Concrete Repair (Harry, I-135 to McLean, Hillside, 21st St to 27th St)	\$600,000.00
	Locations Originally Funded in 2010 CMP Budget	\$1,000,000.00
	Contingency	\$20,000.00
	Subtotal:	\$2,534,000.00
Funding for City Council Districts	Total Available for Six Districts (\$577,667 each district):	\$3,466,000.00

2011 Proposed Contract Maintenance Program (\$6M)

City-Wide Projects	Total Square Yards	Total Cost	Arterial Lane Miles	Residential Lane Miles	Total Lane Miles
Arterial Concrete Repair; 2010 CMP Locations; Asphalt Thermal Crack Repair; Ped Bridge; Preservative Seal; Prep C&G and WCR Upgrade, etc.	N/A	\$2,084,000.00	1.55	10.94	12.49
Engineering Salaries & Overhead	N/A	\$450,000.00	N/A	N/A	N/A
Total for City-Wide Projects	N/A	\$2,534,000.00	1.55	10.94	12.49
Projects for Six Districts	Total Square Yards	Total Cost	Arterial Lane Miles	Residential Lane Miles	Total Lane Miles
Micro Surfacing	47,584	\$400,991.56	0.00	6.20	6.20
Heater Scarification	108,014	\$1,030,361.00	13.10	2.40	15.50
Mill & Overlay and Asphalt Overlay	49,228	\$650,353.00	1.40	5.90	7.30
Rehabilitation	7,338	\$207,444.44	0.00	0.96	0.96
Concrete Repair	23,110	\$1,176,850.00	0.82	2.56	3.38
Total for Projects for Six Districts	235,274	\$3,466,000.00	15.32	18.02	33.34
Grand Total for CMP Funded Projects	235,274	\$6,000,000.00	16.87	28.96	45.83

2011 Proposed Contract Maintenance Program

<i>DISTRICT 1</i>			
STREET	FROM	TO	PROJECT
8th St	Battin	Edgemoor	Concrete Repair
Christy	Fountain (E)	Bluff	Concrete Repair
Washington	Central	Murdock	Concrete Repair
Cleveland	Murdock	13th St	Micro Surfacing
27th St N	Hillside	Bluff	Mill & Overlay
Woodlawn	14th St	Rockhill	Mill & Overlay, Curb Lane

2011 Proposed Contract Maintenance Program

<i>DISTRICT 2</i>			
STREET	FROM	TO	PROJECT
1st St	Zelta	310' West	Asphalt Overlay
2nd St	Zelta	Elson	Asphalt Overlay
3rd St	Zelta	Elson	Asphalt Overlay
Zelta	Douglas	2nd St	Asphalt Overlay
Dowell	S of Lincoln	Wilshire	Asphalt Overlay
Bayley	Dowell	Greenwich	Asphalt Overlay
Heather	Lochinvar	Peach Tree	Concrete Repair
Rock Rd	N of Kellogg Dr (N)	Central	Heater Scarification
Area of N of 21st St & E of Rock Rd			Micro Surfacing
Levitt	Zimmerly	Lincoln	Micro Surfacing

2011 Proposed Contract Maintenance Program

<i>DISTRICT 3</i>			
STREET	FROM	TO	PROJECT
Classen	Hydraulic	Wassall	Asphalt Overlay
Denker	Rose Marie	Classen	Asphalt Overlay
Mason	Wassall	Classen	Asphalt Overlay
Rose Marie	Hydraulic	Wassall	Asphalt Overlay
Carson	Minneapolis	Minnesota	Concrete Repair
K-15 (NB)	Bridge @ Canal	Wassall	Concrete Repair
Marion	South East Dr	Minnesota	Concrete Repair
Minneapolis	Pawnee	Carson	Concrete Repair
South East Dr	Pawnee	Marion	Concrete Repair
Victoria	Pawnee	Scott	Concrete Repair
55th St S	Broadway	Hydraulic	Heater Scarification

2011 Proposed Contract Maintenance Program

<i>DISTRICT 4</i>			
STREET	FROM	TO	PROJECT
Everett	27th St S	Pawnee	Concrete Repair
Harry	Seneca	McLean	Concrete Repair
Orient	Glenn	Dodge	Concrete Repair
29th St S	Meridian	Everett	Micro Surfacing
27th St S	Glenn	Meridian	Rehabilitation

2011 Proposed Contract Maintenance Program

<i>DISTRICT 5</i>			
STREET	FROM	TO	PROJECT
Maize	Maple	North at Bridge	Heater Scarification
O'Neil	Willo-Esque	Ridge	Heater Scarification
Willo-Esque	Maple	O'Neil	Heater Scarification
Area of S of Central & E of Maize			Micro Surfacing
Shade	Westlink	Fairway	Micro Surfacing
Shade Cir	Shade	N Cul De Sac	Micro Surfacing
Nantucket	Cedar Park	Hunters View	Mill & Overlay

2011 Proposed Contract Maintenance Program

<i>DISTRICT 6</i>			
STREET	FROM	TO	PROJECT
Sheridan	13th St	9th St	Asphalt Overlay
22nd St	Shelton	Arkansas	Concrete Repair
Burns	16th St	17th St	Concrete Repair
Ferrell	Jeanette	18th St	Concrete Repair
Payne	21st St	23rd St	Concrete Repair
Zoo Blvd	Central	West St	Heather Scarification
Waco	3rd St	Central	Mill & Overlay

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Support of Sedgwick County's application for Juvenile Accountability Block Grant (JABG) funding

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Approve the waiver of funding.

Background: Since approximately 1999, Sedgwick County and the City of Wichita have been awarded the Juvenile Accountability Block Grant (JABG) through the Juvenile Justice Authority of the State of Kansas. The purpose of these grants has been to financially support juvenile initiatives/programs that focus on intervention and prevention within the community. The City of Wichita recently received notice from Sedgwick County that the 2011 Juvenile Accountability Block Grant allocation has been determined. The total amount of the grant is \$30,639; \$13,455 of which is allocated for the City of Wichita. In order to receive this funding, the City of Wichita would need to make application designating the funding for specific programs related to juvenile justice. The application is due March 31, 2011 and requires a ten percent match from the receiving agency.

Historically, the City of Wichita has waived the right to apply for this funding and requested that Sedgwick County, as primary provider of juvenile justice services in the area, be allocated the designated funds.

Analysis: The Juvenile Justice Authority requests a letter of support from City of Wichita indicating the City declines the award and requests the funds be allocated to the Sedgwick County Department of Corrections for use by the juvenile diversion program in the District Attorney's Office.

Financial Considerations: The City of Wichita will waive the right to apply for \$13,455 in Juvenile Accountability Block Grant Funding.

Goal Impact: Under the City of Wichita's Safe and Secure Initiative, the additional funding will help to ensure the Police Department can continue its emphasis on the community policing philosophy. This philosophy relies on the positive interactions between the police, other governmental and non-governmental agencies, and the community to best address our community's needs regarding safety, crime prevention, and crime-related quality-of-life issues.

Legal Considerations: There are no legal considerations.

Recommendations/Actions: It is recommended that the City Council approve the waiver of funding and authorize the appropriate signatures on the letter of support.

Attachments: Letter of support.



January 4, 2011

Don Chronister
Juvenile Justice Specialist
Juvenile Justice Authority
714 SW Jackson, Suite 300
Topeka, KS 66603

Re: 2010 JABG Direct Award

Dear Mr. Chronister:

The City of Wichita certifies that they recognize that \$13,455 Juvenile Accountability Block Grant funds are set aside for the City of Wichita.

The City of Wichita does not accept the award and request these funds be allocated to the Sedgwick County Department of Corrections for coordination of the juvenile diversion program in the District Attorney's Office.

Sincerely,

Carl Brewer, Mayor
City of Wichita

Office of the Mayor

City Hall • 1st Floor • 455 N. Main • Wichita, Kansas 67202-1698

T 316.268.4331 • **F** 316.858-7743

**City of Wichita
City Council Meeting
January 4, 2011**

TO: Mayor and City Council

SUBJECT: 2011 Narcotic Seizure Fund Budget

INITIATED BY: Wichita Police Department

AGENDA: Consent

Recommendation: Adopt the budget for the Narcotic Seizure Fund.

Background: The Wichita Police Department has utilized the Narcotic Seizure Fund for approximately a decade to fund drug-related Police operations. The Narcotic Seizure Fund consists of monies from federal, state, and other agencies obtained as a result of investigations into illegal enterprises such as the possession and sale of narcotics. After the judicial process is completed, the funds are awarded to the Department. The Wichita Police Department adheres to stringent federal and state guidelines in accounting for and using the Narcotic Seizure funds.

Analysis: The budget for the Narcotic Seizure Fund is adopted to permit the expenditure of funds forfeited to the Wichita Police Department. Federal and state regulations require separate accounts for assets forfeited under different forfeiture programs.

Financial Considerations: As of November 30, 2010, the Narcotic Seizure Fund balance totaled \$554,681. The following budget is recommended for 2011:

	<u>Amount</u>
Undercover buy money	\$ 69,000
Undercover vehicle maintenance	42,000
Undercover fleet replacement	50,000
Undercover vehicle fuel	45,000
Undercover equipment	25,000
Undercover rent	30,800
Law enforcement training	30,000
Annual audit	3,000
Utilities	4,500
Advertising	700
<u>Contingency/helicopter*</u>	<u>100,000</u>
TOTAL	\$400,000

*Contingency balance subject to change based on final Fund balance at the end of 2010.

Goal Impact: Provide a Safe and Secure Community by placing an emphasis on eliminating illegal enterprises such as the possession and sale of narcotics.

Legal Considerations: Federal and State laws require local units of government to use forfeited assets to supplement the funds dedicated to law enforcement and prohibit supplanting local funds with forfeited assets.

Recommendations/Actions: It is recommended that the City Council adopt the Narcotic Seizure Fund budget.

Attachments: None.

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council

SUBJECT: Contract Renewal with Sedgwick County for Housing First Funding

INITIATED BY: Housing and Community Services Department

AGENDA: Consent

Recommendation: Approve the contract agreement renewal and authorize the necessary signatures.

Background: In 2006, the Wichita City Council and the Sedgwick County Commission authorized a Task Force on Ending Chronic Homelessness. The Task Force held meetings and conducted research over an 18-month period, and presented its recommendations to both elected bodies in March, 2008. One of the recommendations was the creation of a Housing First program, which both governmental units endorsed. It was later agreed that the costs for the rental subsidies for the Housing First program would be evenly split between the City of Wichita and Sedgwick County, and that the City of Wichita would administer the program.

Analysis: According to the U.S. Department of Housing and Urban Development a "chronically homeless" person is defined as "an unaccompanied homeless individual with a disabling condition who has either been continuously homeless for a year or more, or has had at least four episodes of homelessness in the past three years." Housing First is a national model which has proven effective in addressing the needs of this population. In Wichita's Housing First program, participants are provided permanent housing in apartments located in scattered sites in the community. They are required to meet weekly with a case manager and to adhere to the terms of their lease. Rent is provided for the units until such time as the participant can live independent of the assistance, or until/unless some other housing arrangement is deemed more appropriate.

Since the program began housing people in March, 2009, a total of 93 have been placed (as of December 1, 2010). Most have done well, although there have been 15 terminations for program violations. Ten people left the program because their income increased and they no longer needed the assistance. Seven people moved to be closer to family, and two people entered a treatment facility. Fifty people remained in housing for over one year; one person died while in housing.

Financial Considerations: The 2011 budget for rent and utilities is \$382,736 for 64 units of housing. The City Council has approved funding from the General Fund and federal funds, equal to half this amount. Sedgwick County has approved funding for the balance. This is the third year of funding for the program.

Goal Impact: Approval of this funding will impact the Economic Vitality & Affordable Living goal.

Legal Considerations: The Law Department has reviewed and approved the contract agreement renewal as to form.

Recommendations/Actions: It is recommended that the City Council approve the contract agreement renewal and authorize the necessary signatures.

Attachments: Contract agreement renewal.

AGREEMENT

This contract entered into as of this _____ day of _____ 2011, by and between the City of Wichita, a municipal corporation, hereinafter referred to as "City" or "Contractor," and Sedgwick County, Kansas hereinafter referred to as "County."

WITNESSETH:

WHEREAS, City and County formed a Taskforce to End Chronic Homelessness (TECH) to develop a plan to effectively address the needs of people experiencing chronic homelessness; and

WHEREAS, the TECH plan to end chronic homelessness included implementation of a Housing First model program; and

WHEREAS, County wishes to contract with City for implementation of a Housing First model as hereinafter described.

NOW, THEREFORE, in consideration of the mutual covenants, conditions and promises contained herein, the parties hereto do agree as follows:

1. Employment: County hereby agrees to engage City as an independent contractor and City hereby agrees to fulfill the purpose, goals and objectives specified in Appendix B – Purpose and Outcomes.
2. Term: The term of this contract shall be for a period of one year, commencing January 1, 2011 and ending December 31, 2011.
3. Scope: City shall do, perform and carry out implementation of a Housing First Model Program to serve individuals who meet the criteria for chronic homelessness and have a disability (as defined by the U.S. Department of Housing and Urban Development) in a satisfactory and proper manner, as determined by County and in conformance with the criteria outlined in Appendix B – Purpose and Outcomes.
4. Compensation: City and County expressly understand and agree that in no event shall the total, full and complete compensation and reimbursement, if any, paid hereunder to City for performance of this contract exceed the maximum cash amount of \$196,186.00 for rent support for approximately 32 apartments. Payments will be made monthly on a reimbursement basis upon receipt of an invoice detailing expenditures for the prior month. An invoice is required for payments to be processed. Additionally, City agrees to report to County quarterly as outlined in Appendix B – Purpose and Outcomes.
5. Indemnification Agreement. Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of such party or of any

employee or agent of that party to the degree such indemnification is allowed by law. Provided, however, that such indemnification shall not be required to the extent that either the indemnified party or the indemnifying party has (or but for the indemnity, would have) a defense against or limitation of the subject liability under the Kansas Tort Claims Act.

6. Termination of Contract.

A. Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

In the event of termination, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by Contractor.

7. Incorporation of Appendices: Appendix A – General Contractual Procedures; Appendix B – Purpose and Outcomes; and Appendix C - Budget are attached hereto and made a part hereof as if fully set out herein.

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IN WITNESS WHEREOF, City and County have executed this contract as of the day and year first above written.

SEDGWICK COUNTY, KANSAS

CITY OF WICHITA, KANSAS

Karl Peterjohn, Chairman
Board of County Commissioners

Carl Brewer, Mayor

ATTEST:

ATTEST:

Kelly B. Arnold, County Clerk

Karen Sublett, City Clerk

APPROVED AS TO FORM:

APPROVED AS TO FORM:



Jennifer Magaña, Deputy County Counselor

Gary E. Rebenstorf, Director of Law

APPENDIX A

GENERAL CONTRACTUAL PROVISIONS

1. AUTHORITY TO CONTRACT.

- A. Affirmation of Legal Authority. City (herein referred to as "Contractor") assures it possesses legal authority to contract these services; that resolution, motion or similar action has been duly adopted or passed as an official act of Contractor's governing body, authorizing the signing of this contract, including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of Contractor to act in connection with the application and to provide such additional information as may be required.
- B. Required Documentation. Domestic (Kansas) corporations shall 1) furnish evidence of good standing in the form of a Certificate signed by the Kansas Secretary of State. Foreign (non-Kansas) corporations shall furnish evidence of authority to transact business in Kansas, in the form of a Certificate signed by the Kansas Secretary of State; and 2) a copy of the Corporation Resolution evidencing the authority to sign the Contract Documents, executed by the Corporation's Secretary or Assistant Secretary. This subparagraph B shall not be applicable if the Contractor is a Kansas Municipal Corporation.

2. RELATIONSHIP of PARTIES.

It is agreed that the legal relationship between Contractor and County is of a contractual nature. Both parties assert and believe that Contractor is acting as an independent contractor in providing the services and performing the duties required by County hereunder. Contractor is at all times acting as an independent contractor and not as an officer, agent, or employee of County. As an independent contractor, Contractor, and employees of Contractor, will not be within the protection or coverage of County's worker's compensation insurance, nor shall Contractor, and employees of Contractor, be entitled to any current or future benefits provided to employees of County. Further, County shall not be responsible for withholding of social security, federal, and/or state income tax, or unemployment compensation from payments made by County to Contractor.

3. PERSONNEL.

- A. Qualified Personnel. Contractor represents that it has, or shall secure at its own expense, all personnel required in performing the services under this contract. All personnel engaged in the work shall be fully qualified according to the laws of the State of Kansas and the provisions of this contract.
- B. Minimum Wages. Contractor will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act.
- C. Employee Conflict of Interest. Contractor shall establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.
- D. Contractor's Safeguard. The parties to this agreement recognize that entities or persons providing government-funded services to the public are the subject of public scrutiny. Consequently, by entering into this agreement Contractor assumes an affirmative and ongoing duty during the pendency of this contract to maintain compliance with requirements set forth in subsection E below. Such compliance requires the use of criminal or other legal background checks upon all personnel or agents providing services pursuant to this agreement, or administering the funds conveyed under this agreement.
- E. Participant Safeguard. Contractor certifies that:
- 1) Persons convicted of any felony, drug or drug-related offense, crime of falsehood or dishonesty, crime of moral turpitude or crime against another person during the ten-year period concluding on the date of execution of this contract or during the pendency of this contract, or any individual who is known by contractor to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to administer this contract or handle the funds conveyed under this contract;
 - 2) Persons with convictions for crimes against persons, for crimes of moral turpitude, including, but not limited to, sex offenses and crimes against children, or any individual who is known by contractor to have had a prior employment history of abuse, neglect or exploitation of children or vulnerable adults, shall not be permitted to provide services or interact in any way with persons served pursuant to this contract; and

- 3) Persons having been convicted of a serious driving offense, including but not limited to driving under the influence of alcohol or a controlled substance, during the five-year period concluding on the date of execution of this contract, or during the pendency of this contract, shall not be permitted to operate a vehicle in which a person served pursuant to this contract is a passenger. For purposes of this section, "serious traffic offense" shall not include any offense deemed a "traffic infraction" under K.S.A. 8-2116 and 8-2118.
- 4) Any question concerning the interpretation of this subsection E and/or its application to an individual shall be referred to the Director of the Agency administering the funding of this agreement for the County. The Director's decision shall be final for purposes of compliance with this contract. The term "conviction" shall include convictions from any federal, state, local, military, or other court of competent jurisdiction, and shall include being placed into a diversion or deferred judgment program in lieu of prosecution. Contractor shall not be held accountable for cases in which diversions or deferred judgments are not reflected in an individual's criminal record, or for expunged convictions, if Contractor would have no other reasonable way of knowing of these acts.

F. It is understood that this contract may be revoked at the discretion of the County if Contractor is in violation of Subsection E.

No penalty shall be assessed to the County for revocation of this agreement in the event of a breach of any portion of Appendix A, Section 3.

4. PROHIBITION OF CONFLICTS OF INTEREST.

- A. Interest of Public Officials and Others. No officer or employee of County, no member of its governing body, and no other public official who exercises any functions or responsibilities in the review or approval of the undertaking or carrying out of this project shall participate in any decision relating to this contract which affects such person's personal interest or the interest of any corporation, partnership, or association in which such person is directly or indirectly interested; nor shall any officer or employee of County or any member of its governing body or other public official have any interest, direct or indirect, in this contract or the proceeds thereof.
- B. Interest of Contractor. Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this contract.
- C. Employee Conflicts. Situations in which 1) an employee of the County shall also be an employee of Contractor at time of agreement, 2) an employee of Contractor seeks additional/alternate employment with County during pendency of agreement, or 3) an employee of County seeks additional/alternate employment with Contractor during pendency of agreement, shall require written notice to the County at the addresses listed in Section Twenty (20) below. The County shall make every effort to assure that such employees do not have any authority to approve 1) grant funds, 2) agreements, or 3) affiliate status to the Contractor or Contractor's competitors.
- D. Notice to Bidders. Requests for proposal or invitations for bid issued by Contractor to implement this contract will provide notice to prospective bidders that County's conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFP's for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

5. FUNDING.

- A. Reprogramming of Funds. It is understood and agreed that in the event the amount of funds County actually receives from the County mill levy is less than anticipated, County may decrease the total compensation and reimbursement to be paid hereunder.
- B. Inability to Perform Contract. It is further understood and agreed that in the event Contractor's rate of progress on this contract is leading to underspending due to inability to provide services at planned levels, County may decrease the total compensation and reimbursement to be paid hereunder or withdraw from the agreement.
- C. Cash Basis and Budget Laws. The right of the parties to enter into this Agreement is subject to the provisions of the Cash Basis Law (K.S.A. 10-1112 and 10-1113), the Budget Law (K.S.A. 79-2935), and other laws of the State of Kansas. This Agreement shall be construed and interpreted so as to ensure that each party shall at all times stay in conformity with such laws, and as a condition of this Agreement each party reserves the

right to unilaterally sever, modify, or terminate this Agreement at any time if, in the opinion of its legal counsel, the Agreement may be deemed to violate the terms of such laws.

D. Non-Supplanting Existing Funds. Contractor assures that grant funds made available under County mill levy grants and administered under this contract will not be used to supplant existing funds or other funding sources, but will be used to increase the amounts of those other funding sources.

E. Unexpended funds. It is agreed by Contractor and County that upon termination or expiration of the contract, any unexpended funds shall be returned to County.

6. PROGRAM INCOME.

Contract-related program income, if generated, shall be collected by Contractor and reported to County on Contractor's quarterly reports, required in Section Seven (7) below. Program income shall be defined as gross income earned by Contractor that is directly generated by a supported activity or earned as a result of the award. Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under the contract, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights. Interest earned on advances of County funds is not program income. Except as otherwise provided in County contract requirements, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc, or interest earned on any of them. Unless otherwise stated in the contract, program income earned during this contract term shall be retained by Contractor and shall be added to funds committed to the project by County and Contractor and used to further eligible project or program objectives.

7. RECORDS, REPORTS AND INSPECTION.

A. Documentation of Costs. All costs incurred by Contractor for which Contractor purports to be entitled to reimbursement shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers, or other official documentation evidencing in proper detail the nature and propriety of charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to this contract shall be clearly identified and readily accessible to both parties to this agreement.

B. Maintenance of Records. Except as otherwise authorized by County, Contractor shall retain such documentation for a period of three (3) years after receipt of the final expenditure report under this contract, unless action, including but not limited to litigation or audit resolution proceedings, necessitate maintenance of records beyond this three (3) year period.

C. Reports. During the term of this contract, Contractor shall furnish to County, in such form as County may require, such statements, records, reports, data and information as County requests pertaining to matters covered by this contract. Payments to Contractor will be withheld by County if Contractor fails to provide all required reports in a timely and accurate manner, until such time as all reports are furnished to County. Incomplete reports may be considered a breach of this contract.

D. Audit. Contractor shall provide for an annual independent audit of its financial records and shall provide a copy of said audit to County annually. With the copy of the audit Contractor shall include a copy of the audit letter to management and agency response. If not otherwise required by law to perform an audit and upon approval by County, Contractor may provide a copy of a financial balance sheet developed by a reputable accountant/accounting firm instead of a formal audit.

E. Availability of Records. Contractor agrees to make any and all of its records, books, papers, documents and data available to County, or the authorized representative of a State agency with statutory oversight authority, for the purpose of assisting in litigation or pending litigation, or making audits, examinations, excerpts, copies and transcriptions at any time during the terms of this contract and for a three (3) year period following final payment under the terms of this contract.

F. Contractor's Purchasing Procedure. Contractor certifies that it does not practice any form of discrimination based on race, ethnic origin, gender or religion or disability in its purchasing procedures. Contractor agrees to make available a written description of its purchasing procedures if requested by County.

G. Confidentiality. Both parties will comply with the provisions of State and federal regulations in regard to confidentiality of eligible participant records.

8. METHOD OF BILLING AND PAYMENT.

A. Billing Procedures. Contractor agrees that billings and payments under this contract shall be processed in accordance with established budgeting, purchasing and accounting procedures of Sedgwick County, Kansas. Subject to the maximum amount of compensation prescribed on page 1 at paragraph 4 of this

contract, payment shall be made after the receipt of billing, and the amount of payment shall not exceed the maximum amount allowed by this contract.

- B. Support Documentation. Billing shall be supported with documentation required by County including, but not necessarily limited to, that documentation described in Section Seven (7) above.
- C. Reimbursement Restrictions. Payments shall be made to Contractor only for items and services provided to support the contract purpose when such items and services are specifically authorized by this agreement. County reserves the right to disallow reimbursement for any item or service billed by Contractor if County believes that such item or service was not provided to support the contract purpose or was not authorized by the contract.
- D. Pre-disbursement Requirements. Contractor must provide to County the documentation required pursuant to this contract prior to any disbursements being made by County to Contractor.
- E. Mailing Address. Payments shall be mailed to Contractor's address as listed in paragraph 20 below.

9. PARTICIPANT INPUT.

Contractor shall provide persons receiving services funded pursuant to this contract with an opportunity to assess and evaluate the program at least once during the contract term, unless such requirements are more specifically addressed elsewhere in this agreement or by statute.

10. LICENSES AND PERMITS.

Contractor shall maintain all licenses, permits, certifications, bonds, and insurance required by federal, state or local authority for carrying out this contract. Contractor shall notify County immediately if any required license, permit, bond or insurance is canceled, suspended or is otherwise ineffective. Such cancellation, suspension, or other ineffectiveness may form the basis for immediate revocation by County, in its discretion.

11. INSURANCE REQUIREMENTS

Contractor shall annually provide evidence of its self-insured status upon request. Contractor shall also annually provide evidence of Professional Liability insurance, as appropriate.

12. EPA APPROVED BUILDING.

Contractor will insure that the facilities under its ownership, lease or supervision which shall be utilized in the accomplishment of the contract are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the contract is under consideration for such listing by the EPA.

13. HANDICAPPED ACCESSIBILITY.

Contractor will comply with the Rehabilitation Act of 1973, as amended, Section 504, which prohibits discrimination against handicapped persons in employment services, participation and access to all programs receiving federal financial assistance. Contractor shall also comply with applicable requirements of the Americans With Disabilities Act (ADA) which is a federal anti-discrimination statute designed to remove barriers which prevent qualified individuals with disabilities from enjoying equal treatment by state and local governments and their agencies in employment practices and accessibility in public services and programs.

14. ASSIGNMENT.

Neither this contract nor any rights or obligations hereunder shall be assigned or otherwise transferred by either party without the prior written consent of the other.

15. SUBCONTRACTING.

None of the work or services covered by this contract shall be subcontracted without the prior written approval of County. All approved subcontracts must conform to applicable requirements set forth in this contract and in its appendices, exhibits and amendments, if any.

16. PUBLICATION OF CONTRACT RESULTS.

- A. Copyright. If this contract results in a book or other material which may be copyrighted, the author is free to copyright the work. County reserves a royalty-free, non-exclusive and irrevocable license to reproduce, publish or otherwise use and to authorize others to use all copyrighted material and all material which can be copyrighted.

B. Documentation of originality or source. All published material and written reports submitted under this contract or in conjunction with the third party agreement under this contract will be originally developed material unless specifically provided for otherwise. Material not originally developed included in reports will have the source identified either in the body of the report or in a footnote, whether the material is in a verbatim or extensive paraphrase format. All published material and written reports shall give notice that funds were provided by a grant from County.

17. COMPLIANCE WITH APPLICABLE LAWS, SERVICE STANDARDS AND REQUIRED PROCEDURES. A. Service Standards and Procedures. Contractor shall perform the services set forth in this contract in compliance with applicable standards and procedures specified in Appendix B which covers the specific purpose and outcomes of this agreement.

B. Governing Law. This contract shall be interpreted under and governed by the laws of the State of Kansas.

C. Compliance With Law. Contractor shall comply with all applicable local, state and federal laws and regulations, in carrying out this contract, regardless of whether those legal requirements are specifically referenced in this agreement.

D. Access to Meetings. Contractor agrees to grant access to County to meetings of its managing board or committee during that time when matters involving use of County grant funds are discussed, if requested by County.

18. EQUAL OPPORTUNITY AND AFFIRMATIVE ACTION.

In carrying out this contract, Contractor shall deny none of the benefits or services of the program to any eligible participant pursuant to K.S.A. 44-1001 *et seq.*

A. Contractor shall observe the provisions of the Kansas act against discrimination and shall not discriminate against any person in the performance of work under this contract because of race, religion, color, sex, disability, national origin, or ancestry.

B. In all solicitations or advertisements for employees, Contractor shall include the phrase "equal opportunity employer" or a similar phrase to be approved by the Kansas Human Rights Commission.

C. If Contractor fails to comply the provisions of K.S.A. 44-1031, requiring reports to be submitted to the Kansas Human Rights Commission when requested by that Commission, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part, by County.

D. If Contractor is found guilty of a violation of the Kansas act against discrimination under a decision or order of the Kansas Human Rights Commission which has become final, Contractor shall be deemed to have breached this contract and it may be canceled, terminated or suspended, in whole or in part by County.

E. Contractor shall include the provisions of paragraphs A through D inclusively of this section in every subcontract or purchase order so that such provisions will be binding upon such subcontractor or vendor.

F. The provisions of this section shall not apply to a contract entered into by a contractor who: 1) employs fewer than four employees during the term of this contract; or 2) whose contracts with the County cumulatively total \$5,000.00 or less during the fiscal year of the County pursuant to K.S.A. 44-1031(c).

19. TERMINATION OF CONTRACT.

A. Termination for Cause. If Contractor shall fail to fulfill in a timely and proper manner its obligations under this contract, or if Contractor shall violate any of the terms, covenants, conditions, or stipulations of this contract, County shall thereupon have the right to terminate this contract by promptly giving written notice to Contractor of such termination and specifying the reasons for the termination and the effective date thereof. A breach shall include, but not be limited to, failure to comply with any or all items contained in this contract and any appendices, exhibits or amendments thereto, if any.

In the event of termination, such information prepared by Contractor to carry out this contract, including data, studies, surveys, records, drawings, maps and reports shall, at the option of County, become the property of the County and be immediately turned over to the County. Contractor shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Notwithstanding the above, Contractor shall not be relieved of liability to County by virtue of any breach of this contract by Contractor and County may withhold any payments to Contractor for the purpose of set off until such time as the exact amount of damages due County from Contractor are determined.

B. Termination of Contract on Other Grounds. Except for paragraph A above, this contract may be terminated in whole or in part by either party, upon thirty (30) days written notice to the other party, stating the reasons(s) for the termination and the effective date of the termination. A partial termination shall also be specified in writing by the terminating party and shall not be effective unless and until the other party has given its written assent thereto. When this contract is terminated, Contractor shall not incur new obligations for the terminated portion after the effective date of the termination and shall cancel as many outstanding obligations as possible. County shall allow full credit to Contractor for the grant share of the non-cancelable obligations properly incurred by Contractor prior to termination. Whether this contract is canceled by County or Contractor as provided herein, Contractor shall be paid for work satisfactorily completed, so long as the provisions applicable to Billing and Payment have been met by Contractor.

20. INDEMNIFICATION AGREEMENT.

Both parties hereby expressly agree and covenant that they will hold and save harmless and indemnify the other party, its officers, agents, servants and employees from liability of any nature or kind connected with the work to be performed hereunder arising out of any act or omission of such party or of any employee or agent of that party to the degree such indemnification is allowed by law. Provided, however, that such indemnification shall not be required to the extent that either the indemnified party or the indemnifying party has (or but for the indemnity, would have) a defense against or limitation of the subject liability under the Kansas Tort Claims Act.

21. NOTIFICATION.

Notifications required pursuant to this contract shall be made in writing and mailed to the addresses shown below. Such notification shall be deemed complete upon mailing.

County: Sedgwick County Division of Human Services
Attn: Deborah Donaldson, Director
635 N. Main,
Wichita, KS 67203-3752
PHONE (316) 660-7600
FAX (316) 383-7925

Sedgwick County Legal Department
Attn: Contract Notification
Sedgwick County Courthouse
525 N. Main, Suite 359
Wichita, KS 67203-3790

Contractor: City of Wichita
Mary K. Vaughn, Housing Director
332 N. Riverview
Wichita, Kansas 67203

City of Wichita Legal Department
Attn: Contract Notification
City Hall, 455 North Main
Wichita, KS 67202

22. Amendments to Agreement.

To provide necessary flexibility for the most effective execution of this contract, whenever both County and Contractor mutually agree, changes to this contract may be effected by placing them in written form and incorporating them into this contract. Any change which affects contract objectives must be approved by COMCARE and the Sedgwick County Board of Commissioners. Line item changes to the approved Appendix C- Budget

(where applicable) exceeding ten percent (10%) or \$5,000 (whichever is less) must be presented to and approved by the Executive Director of COMCARE.

23. Certificate of Tax Clearance.

Annually Contractor shall provide County with a certificate of tax clearance from the State of Kansas certifying Contractor has paid all state taxes.

APPENDIX B – PURPOSE AND OUTCOMES

CITY OF WICHITA – HOUSING FIRST INITIATIVE

It is mutually agreed by and between County and City that it is the purpose of this contract for City to implement a Housing First model program to serve individuals who meet the criteria for chronic homelessness and have a disability (as defined by the U.S. Department of Housing and Urban Development) through its Housing and Community Services Department.

1. GENERAL PROVISIONS.

- A. It is understood that City's records used in the preparation of all reports are subject to review by County to insure the accuracy and validity of the information reported.
- B. It is mutually agreed by and between County and City that this contract will be evaluated by County in terms of meeting purpose and outcomes.
- C. City shall provide written notice to the Director of Human Services if it is unable to provide the requested quantity or quality of service. This written notice shall include a plan to address the issues affecting quantity and/or quality of services being provided.
- D. City agrees to submit a program progress report covering the outcomes as listed below by the 15th day of the month following each calendar quarter. Financial reports are due no later than the 15th day of the month following the end of each calendar quarter. Reports should be in a format acceptable to County. A report template is available. The report should be sent to the COMCARE Contractor Administrator (e-mail address available upon request). The program progress report should address the outcomes as stated in the contract. Financial reports should provide a line item account of how the funds were expended over the last quarter in accordance with the budget as set out in Appendix C. If the reports are not received by the aforementioned deadline, City may be subject to suspension of payment until the reports have been received and approved.
- E. Sedgwick County funds will only be used to serve individuals who meet the criteria for chronic homelessness and have a disability (as defined by the U.S. Department of Housing and Urban Development).

2. SERVICE DESCRIPTION.

A Housing First program is designed to end homelessness and support recovery for individuals who are homeless and have a disability. The Housing First model is based on the belief that housing is a basic need and on a theoretical foundation that emphasizes consumer choice and harm reduction. The program addresses homeless individuals' needs from a consumer perspective, encouraging them to define their own needs and goals, and

provides immediate housing (in the form of apartments located in scattered sites) without any prerequisites for treatment.

Consumers' tenancy is not dependent on their adherence to treatment. Case managers work with consumers through housing loss, hospitalization, or incarceration and helps consumers obtain housing after these episodes. While consumers can refuse services, the program requires them to meet with a case manager at least four times per month to ensure their safety and well-being.

Important components for all Housing First programs include:

- a) Case management is utilized to coordinate services that follow a housing placement;
- b) Housing is not contingent on the consumer's willingness to accept treatment services;
- c) Consumers are encouraged but not required to take medications or abstain from using substances to participate;
- d) Service plans are individualized and client driven;
- e) Assistance locating rental housing and lease negotiation, as well as relationship building with private market landlords;
- f) Housing placement is not time limited; and,

Sedgwick County is allocating \$196,186.00 for approximately 32 apartments in the Housing First Model Program. It is anticipated that 16 of the 32 apartments will be one-bedroom apartments but the figure can be adjusted contingent on County approval. Up to \$10,000 is budgeted for repairs.

3. OUTCOMES.

City agrees to report on outcomes quarterly. Performance reports are due by the 15th day of the month following the end of the calendar quarter. Reports should be submitted to the attention of the Division of Human Services Homeless Plan Specialist at 635 N. Main, Wichita, KS 67203.

1. Maintain fidelity to the model as evidenced by adherence to the components listed above.
2. Reduction in length of stay in shelters as measured by time Housing First consumers spent in shelters during the last year as compared to length of time spent in shelters during the current year.
3. Number of consumers referred for Housing First services, placed in Housing First apartments, and number of consumers continuing in the Housing First program.
4. Reduction in subsidy amounts needed to continue housing participants, due to increases in participant income.
5. Reduction in homelessness for program participants as measured by consumers not re-entering the shelter system.
6. Number of positive exits from the Housing First program.

APPENDIX C – BUDGET

CITY OF WICHITA HOUSING FIRST PROGRAM

EXPENDITURE	BUDGETED AMOUNT
Rent and Security Deposit	\$186,186.00
Repairs	\$10,000.00
TOTAL	\$196,186.00

City of Wichita
City Council Meeting
January 4, 2011

TO: Mayor and City Council
SUBJECT: 2011 Senior Wednesday Program - WATER Center (District III)
INITIATED BY: Department of Public Works & Utilities
AGENDA: Consent

Recommendation: Authorize receipt of the Senior Wednesdays program funding.

Background: The WATER Center is part of a local, informal coalition of museums, which provides monthly programming, Senior Wednesdays for active seniors in the Wichita community. The program directly impacts the health of senior adults by enhancing their quality of life through community involvement, lifelong learning and the opportunity to socialize with other senior adults. The WATER Center has hosted Senior Wednesdays since 2005 and has received funding for the program through a portion of a Kansas Health Foundation Recognition Grant since 2006.

Analysis: The WATER Center received notice that the Senior Wednesday's program had been awarded a Kansas Health Foundation Recognition Grant. Each year, a different museum seeks the funding to support the Senior Wednesday programming at all of the ten participating museums. The grant was submitted and will be managed in 2011 by Exploration Place. The grant money will be used to offset the marketing expenses associated with the program and to fund the program supplies and presentations of the ten museums involved in presenting Senior Wednesday's programs including the WATER Center.

Financial Considerations: The total of the grant award for the ten participating museums is \$12,795. The WATER Center's portion of the grant awarded is \$1,481. There is no match required. The WATER Center agrees to:

- Use the grant monies toward Senior Wednesdays programming, and
- Make available, on request by the Kansas Health Foundation, all financial and other records relating to Senior Wednesdays.

Goal Impact: This project addresses the Quality of Life goal by educating senior citizens on water pollution and conservation concepts to protect the City's natural resources.

Legal Considerations: There are no legal considerations.

Recommendation/Action: It is recommended the City Council approve receipt of the grant award.

Attachment: Kansas Health Foundation Recognition Grant Award Letter, directed to Exploration Place, and subsequent Allocation Chart

INSTITUTION	# PROGRAMS	ALLOCATION
Wichita Art Museum	12	\$1,616.21
WATER Center	11	\$1,481.53
Sedgwick County Zoo	11	\$1,481.53
Wichita Public Library	11	\$1,481.53
Edwin A. Ulrich Museum of Art	11	\$1,481.53
The Kansas African American Museum	11	\$1,481.53
Wichita-Sedgwick County Historical Museum	10	\$1,346.84
Exploration Place	10	\$1,346.84
Great Plains Nature Center	4	\$538.74
Old Cowtown Museum	4	\$538.74
TOTAL	95	\$12,795.00



Kansas Health Foundation Dedicated to Improving the Health of All Kansans

RECEIVED

December 1, 2010

DEC 4 2010

Janice Luth
President
Exploration Place, Inc.
300 N. McLean Blvd.
Wichita, KS 67203

RE: Grant #201001001-236

Dear Mrs. Luth:

On behalf of the Kansas Health Foundation Board of Directors, I am pleased to inform you that your Recognition Grant request to fund "Senior Wednesday Coalition" has been approved. However, only the amount for admissions will be funded. The Kansas Health Foundation agrees to provide \$12,795.00 to partially fund this project. A check for this amount is enclosed.

The amount of this grant is less than the total cost of the project. If for any reason you are not in a position to secure enough dollars to complete the project, please contact Carolyn Williams, Kansas Health Foundation Program Officer, to discuss appropriate use of the dollars.

By accepting this grant and cashing the enclosed check, you specifically agree that:

- (a) grant monies will be used as identified in your Recognition Grant application to the Kansas Health Foundation;
- (b) all financial and other records relating to the Project will be made available on request;
- (c) any sums not used for the purposes of the Project will be returned; and,
- (d) this grant does not create a principal-agent relationship of any type.

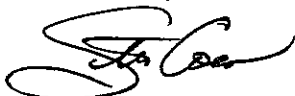
Enclosed with this letter you will find a listing of the Recognition Grant recipients for this grant cycle. As a Recognition Grant recipient, you are invited to attend the annual conference for grantees that will be held on April 13-14, 2011, at the Hyatt Regency Hotel in Wichita. The purpose of this two-day conference is to provide information and resources to support your efforts and allow you to connect with other non-profit organizations throughout the state. Included will be several skill-building workshops, with topics ranging from an overview of strategic communications planning, volunteer management, leadership, fund-raising and donor development, to board development. Additional

Janice Luth
Exploration Place, Inc.
December 1, 2010
Page 2 of 2

information and registration materials will be sent to you in early January, but please mark your calendars now with the above dates.

Please refer to the previously referenced grant number on all future correspondence regarding this grant. All questions or comments regarding your grant program or project content should be directed to Carolyn Williams, Kansas Health Foundation Program Officer at (800) 373-7681 or (316) 262-7676. Finally, please send copies of any press releases to the attention of Chase Willhite, Kansas Health Foundation Communication Officer.

Sincerely,



Steve Coen
President & CEO

SC/gh

Enclosures

pc: Laurel Zhang
Carolyn Williams
Chase Willhite

RECEIVED

DEC 4 2010

THIS CHECK IS VOID WITHOUT A BLUE & RED BACKGROUND AND A TRUE WATERMARK - HOLD UP TO THE LIGHT TO VERIFY

KANSAS HEALTH FOUNDATION

309 E. Douglas
Wichita, KS 67202-3405

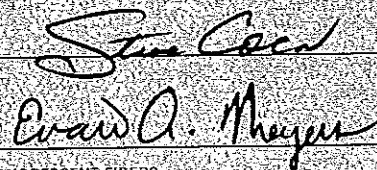
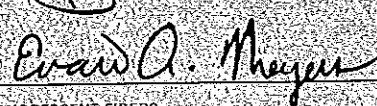
INTRUST BANK, NA
Wichita, Kansas, 67201-5001
40-2-1011

45161

DATE	11/16/2010
AMOUNT	***12,795.00

PAY Twelve Thousand Seven Hundred Ninety-Five and 00/100*****

TO THE ORDER OF EXPLORATION PLACE INC
300 N MCLEAN BLVD
WICHITA, KS 67203

CHECK IS PRINTED ON SECURITY PAPER WHICH INCLUDES A MICROPRINT BORDER & FLUORESCENT FIBERS

⑈45161⑈ ⑆101100029⑆ 01 5292 7⑈